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United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

Report of the Secretary-General

Summary

The present report is submitted pursuant to General Assembly resolution 56/77 of 12 December 2001. It covers the implementation of the Programme of Assistance during the biennium 2002-2003 and provides guidelines and recommendations for the execution of the Programme for the biennium 2004-2005.

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I. Introduction

1. The General Assembly, by its resolution 56/77 of 12 December 2001, authorized the Secretary-General to carry out in 2002 and 2003 the activities specified in the report on the Programme that he had submitted at the fifty-sixth session (A/56/484). In paragraph 15 of the resolution, the Assembly requested the Secretary-General to report to it at its fifty-eighth session on the implementation of the Programme during 2002 and 2003 and, following consultations with the Advisory Committee on the Programme, to submit recommendations regarding the execution of the Programme in subsequent years.

2. The present report covers the implementation of the Programme of Assistance during 2002-2003 in accordance with the guidelines and recommendations contained in the report of the Secretary-General to the General Assembly at its fifty-sixth session (A/56/484). This report, inter alia, gives an account of the activities performed by the United Nations itself and of those in which the Organization has participated, as well as a description of contributions made by the United Nations Institute for Training and Research (UNITAR). However, unless otherwise indicated, specific information included in the present report refers to activities during 2003. Information for the year 2002 was included in the interim report of the Secretary-General dated 9 October 2002.[1]

II. Implementation of the Programme during the biennium 2002-2003

A. Activities of the United Nations

1. Geneva International Law Seminar

3. The thirty-ninth session of the International Law Seminar was held at the Palais des Nations in Geneva from 7 July to 25 July 2003 during the fifty-fifth session of the International Law Commission. Twenty-four candidates (10 males and 14 females) were selected and participated in the 2003 Seminar. Participants were from Angola, Azerbaijan, Cameroon, Canada, Costa Rica, Finland, France, Gabon, Germany, Ghana, Greece, India, Israel, Kenya, Latvia, Malaysia, Myanmar, Nicaragua, Panama, Paraguay, Qatar, Romania, Senegal and Spain.

4. Contributions for the 2003 United Nations Trust Fund for the International Law Seminar were made by the Governments of Austria, Cyprus, Finland, Germany, Ireland, the Republic of Korea and Switzerland. The financial situation of the Fund allowed for the award of a sufficient number of fellowships to candidates from developing countries in order to achieve an adequate geographical distribution of participants. This year, full fellowships (travel and subsistence allowance) were awarded to 13 candidates and partial fellowships (subsistence or travel only) to 4 candidates.

5. Of the 879 participants, representing 154 nationalities, who have taken part in the Seminar since 1965, the year of its inception, 522 have received a fellowship.

6. The Seminar was opened by the Chairman of the International Law Commission, Enrique J. A. Candioti, and members of the Commission gave lectures to the fellows on the following topics: unilateral acts of states; transboundary harm

arising from hazardous activities; *mettre un terme à l'impunité*; diplomatic protection; the work of the International Court of Justice; responsibility of international organizations; shared natural resources; the use of force in international law; and fragmentation. Lectures were also given by members of the World Health Organization (WHO), the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC) and the United Nations Office of Legal Affairs on the following topics: the WHO Framework Convention on Tobacco Control; international refugee law; current challenges to international humanitarian law; some aspects of recent developments in the Law of Treaties; and the work of the International Law Commission.

2. International Law Fellowship Programme

7. In paragraph 2 (a) of its resolution 56/77, the General Assembly authorized the Secretary-General to award a number of international law fellowships in both 2002 and 2003, to be determined in the light of the overall resources for the Programme of Assistance and to be awarded at the request of Governments of developing countries. On the basis of the resolution, 18 fellowships were awarded in 2002 and 19 fellowships in 2003.

8. For the 2003 Fellowship Programme, 197 applications from 56 countries had been received by the closing date. The 19 fellows (9 males and 10 females) who were selected in 2003 were from the following countries: Algeria, Angola, Benin, Bulgaria, Burkina Faso, Cambodia, Central African Republic, Congo, Djibouti, Dominican Republic, El Salvador, Equatorial Guinea, Gabon, Kazakhstan, Lao People's Democratic Republic, Mexico, Morocco, Rwanda and Slovenia.

9. In addition to a series of lectures on public international law given at the Hague Academy of International Law, the Fellowship also offered an intensive programme of seminars and complementary study visits organized by the United Nations Office of Legal Affairs and UNITAR.

10. In 2003, the lectures included: "International Law in the Age of Human Rights" (Th. Meron, Judge, International Criminal Tribunal for the Former Yugoslavia, The Hague); "International Protection of Refugees and Displaced Persons in Armed Conflicts" (O. Casanovas, Professor at Pompeu Fabra University, Barcelona); "Theory of State Contracts and the Evolution of International Law" (Ch. Leben, Professor at the University of Paris II); "Evolution of International Water Law" (E. Brown Weiss, Professor at Georgetown University, Washington, D.C.); "International Law and the Will of States" (M. Kamto, Professor at the University of Yaoundé II); "International Law when Faced with Terrorism" (P. Klein, Professor at the Free University of Brussels); and "International Law of Sustainable Development" (N.J. Schrijver, Professor at the Free University of Amsterdam).

11. In 2003, the seminars included: "International Trade Law and Commercial Arbitration" (R. Amoussou Guenou, Lecturer at the Asian Institute for Technology, Bangkok, and Regional Expert on Legal Cooperation in the Association of Southeast Asian Nations, Embassy of France, Bangkok); "Intellectual Property Law" (M. Kateb, Senior Counsellor, World Intellectual Property Organization (WIPO) Worldwide Academy, WIPO, Geneva); "International Criminal Law" (E. David, Professor at the Free University of Brussels); "Law of the Sea" (T. Treves, Judge, International Tribunal for the Law of the Sea, Hamburg, and Professor at the

University of Milan); "Treaty Law" (L. Condorelli, Professor at the University of Florence, Italy); "International Protection of Human Rights" (Y. Diallo, Human Rights Specialist, formerly of UNHCR, Geneva); "International Environmental Law" (L. Boisson de Chazournes, Professor at the University of Geneva); and "The Multilateral Trading System" (G. Marceau, Counsellor, Legal Affairs Division, World Trade Organization, Geneva).

12. Under the Programme, study visits were arranged in 2003 to the International Court of Justice, the Permanent Court of Arbitration, the International Criminal Tribunal for the Former Yugoslavia, the Iran-United States Claims Tribunal and EUROPOL.

3. Regional courses

13. A regional international law course has been organized for participants from Latin American countries to be held in Quito from 16 to 27 February 2004.

4. Activities of the Office of Legal Affairs

(a) Public international law and other activities

14. As in the past, the Office of Legal Affairs of the United Nations Secretariat, and in particular its Codification Division, continued to perform various functions connected with the goals of the Programme.

15. The Office, in cooperation with UNITAR, made the various arrangements relating to the general orientation of the Fellowship Programme in International Law, such as the selection of fellows and the lecturers for the Programme. Close consultations were maintained between the Codification Division and UNITAR so as to ensure the implementation of the guidelines for the Fellowship Programme as approved by the General Assembly.

16. The Office of Legal Affairs received and assigned interns to participate in activities related to some of its projects. The Office selects interns and arranges for the duration and type of their training and assigns them to projects in which an intern has a special interest. Interns bear all their own financial expenses.

17. Regarding the United Nations Audio-Visual Library in International Law, the Codification Division has ascertained that the Dag Hammarskjöld Library is agreeable to assuming the administration of the Library.

18. The Codification Division also assists in the electronic dissemination of information regarding United Nations work on the codification and progressive development of international law, as well as on some aspects regarding its application. A summary of the activities of the Division is to be found in the international law section of the United Nations home page under "Codification of international law" (www.un.org/law/lindex.htm). The Division also maintains web sites for: the Sixth Committee of the General Assembly (www.un.org/law/cod/sixth/index.html) containing, inter alia, links to documents in all official languages and a summary of the activities of the Committee organized by session; the International Law Commission (www.un.org/law/ilc/index.htm), including the Commission's most recent reports and other documentation as well as an online research guide; and the International Criminal Court (www.un.org/law/icc/index.html), containing up-to-date information as to the status of the Rome

Statute and links to recent documentation. In addition, information and documentation links are also available at the web sites of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 on international terrorism. Web sites have recently been created for the Ad Hoc Committee on Jurisdictional Immunities of States and their Property, the Ad Hoc Committee on an International Convention against the Reproductive Cloning of Human Beings, the Ad Hoc Committee on the Scope of Legal Protection under the Convention on the Safety of United Nations and Associated Personnel, and Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. The Division also has established a web site on the *Repertory of Practice of United Nations Organs* (www.un.org/law/repertory). Finally, the Codification Division has been assisting with the inputting of published United Nations legal opinions into the database of the Global Legal Information Network (GLIN), which was developed by the United States Library of Congress and which has as its goal the inclusion of all the world's laws, as well as other legal information.

19. The web site of the Division for Ocean Affairs and the Law of the Sea on the United Nations home page (www.un.org/Depts/los/index.htm) is now providing information on the status of the 1982 United Nations Convention on the Law of the Sea and related instruments; legal aspects of the marine environment, marine resources; activities of other organizations and bodies in the area of oceans and the law of the sea; relevant international and regional agreements; information on settlement of disputes; and extensive lists of documents and publications aimed at a better understanding of the legal regime as contained in the Law of the Sea Convention.

(b) Activities concerning the law of the sea and ocean affairs: the Hamilton Shirley Amerasinghe Memorial Fellowship

20. The fellowship provides an opportunity for fellows to advance in their chosen professions or vocations by expanding their knowledge and attaining a better understanding of and greater specialization in the fields of study related to the law of the sea and its implementation. The candidates for the fellowship must have a degree in law, marine science, political science, ocean management, administration of ports or in related disciplines. They must have at least five years of work-related experience.

21. The fellowship is awarded by the Under-Secretary-General for Legal Affairs, the Legal Counsel, on the recommendations of the Advisory Panel.

22. The award under the fellowship programme provides successful fellows with facilities for postgraduate study and research in the field of the law of the sea, its implementation and related marine affairs, at participating universities.

23. The fellowship is publicized globally and applications are received in response to invitations extended through the offices of the resident representatives of the United Nations Development Programme and through the United Nations information centres. The selection of candidates is subject to a two-stage process. The preliminary stage of review of the individual applications and nominations, which are received from Governments, governmental agencies, institutions and other bodies, is carried out by the Division for Ocean Affairs and the Law of the Sea in cooperation with the Codification Division of the Office of Legal Affairs which

draw up a shortlist of candidates. The shortlist is then evaluated by the high-level Advisory Panel.

24. Annual awards have been offered to individuals from the following countries: Nepal (1986); United Republic of Tanzania (1987); Chile (1988); Trinidad and Tobago (1989);[2] São Tomé and Príncipe (1990); Yugoslavia (1991); Thailand (1992); Kenya (1993);[3] Cameroon and Seychelles (1994); Tonga (1995); Indonesia (1996); Samoa (1997); Nigeria and Papua New Guinea (1998); Barbados and Sri Lanka (1999); Kenya (2000); Bulgaria and Iran (Islamic Republic of) (2001); and Cape Verde and Colombia (2002).[4]

25. The Advisory Panel will meet in early November 2003 to choose a candidate for the eighteenth annual award.

(c) Activities concerning international trade law

26. The activities conducted by the United Nations Commission on International Trade Law (UNCITRAL) and its secretariat (International Trade Law Branch of the United Nations Office of Legal Affairs) in connection with the Programme of Assistance are designed primarily to acquaint government officials, lawyers and scholars, particularly from developing countries, with the work of UNCITRAL and with the legal texts that have emanated from its work.

27. The Commission, pursuant to General Assembly resolutions 56/79 of 12 December 2001 and 57/17 of 19 November 2002, organized seminars and symposia in many developing countries with the objective of assisting them in adopting and implementing UNCITRAL texts. In addition, members of the UNCITRAL secretariat participated as speakers in a number of seminars and courses financed by institutions organizing those events or by other organizations. The Assembly in its resolutions reiterated its appeal to Governments, the bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the United Nations Commission on International Trade Law Trust Fund for Symposia and, when appropriate, to the financing of special projects, and otherwise to assist the secretariat of the Commission in financing and organizing seminars and symposia, in particular in developing countries, and in the award of fellowships to candidates from developing countries to enable them to participate in such seminars and symposia. The Assembly also appealed to the United Nations Development Programme and other bodies responsible for development assistance, as well as to Governments, to support the training and technical assistance programme of the Commission and to cooperate and coordinate their activities with those of the Commission.

28. The UNCITRAL web site (www.uncitral.org) is designed to provide relevant information concerning the Commission to Governments, Commission delegates, researchers, practitioners and others interested in the work of the Commission. The site contains both texts adopted by the Commission and preparatory documentation for the Commission and its six working groups; case law on UNCITRAL texts (CLOUT); conventions (including their status) and model laws (including their implementation by States); archived research materials; and other texts relating to international trade law.

(d) Activities concerning treaty law matters

29. The United Nations Treaty Section has continued to expand its programme of technical assistance on treaty law and practice in the context of the *Strategy for an Era of Application of International Law: Action Plan*. In addition to the technical assistance and advice routinely provided to permanent missions and government legal officers and various parts of the United Nations Secretariat on the registration and publication of treaties and the depositary practice of the Secretary-General, advice and assistance were also provided on treaties and related actions recorded and stored in the Treaty Section database and on the drafting of final clauses of multilateral treaties.

30. In particular, the Treaty Section, in collaboration with UNITAR, organized two training sessions at United Nations Headquarters on treaty law and practice. The sessions were well attended and the feedback was very satisfactory. In addition, the Section organized its first regional training programme on treaty law and practice in the Lao People's Democratic Republic from 12 to 14 February 2003, with a follow-up workshop held from 7 to 9 October 2003. The training focused on the depositary practice of the Secretary-General and the registration practice of the United Nations Secretariat, with a view to encouraging greater participation by the Lao People's Democratic Republic in the multilateral treaties deposited with the Secretary-General and in the process, to advance and consolidate the international rule of law.

31. In preparation for the 2003 Treaty Event, which was held from 23 to 27 September, on the theme of "Transnational Organized Crime and Terrorism", the Treaty Section, in conjunction with the United Nations Office on Drugs and Crime, organized a panel of international experts on "The International Rule of Law: Multilateral Treaties against Transnational Organized Crime and Terrorism" at United Nations Headquarters on 8 July.

5. Publications

(a) United Nations Treaty Collection

32. Consistent with the wishes of the Member States, the Treaty Section has continued to develop and enhance the Section's computerization programme in order to facilitate the effective storage, retrieval and timely dissemination of treaty information, now substantially contained in the web site of the United Nations Treaty Collection. In 2003, "Focus 2003: Treaties against Transnational Organized Crime and Terrorism" was added to the home page. The site is being updated to include all treaties published to date and its search capabilities are being upgraded. In addition, the certified true copies of multilateral treaties deposited with the Secretary-General are being prepared for posting on the site. The Treaty Section has furthermore published *Multilateral Treaties deposited with the Secretary-General, status as at 2002* on CD-ROM with a seamless interface with the Treaty Collection web site. Developing country users, NGOs, national Governments, users within the United Nations family and members of the International Law Commission have been provided free access to the Treaty Collection web site.

(b) ***United Nations Juridical Yearbook***

33. The following *Yearbooks* have been completed and sent to press: 1998, 1999 and 2000. The 1997 volume is expected to be published shortly. Work on the 2001 *Yearbook* is well under way.

(c) ***United Nations Reports of International Arbitral Awards***

34. Volume 22 was prepared by the Codification Division and has been published. Volume 23 is expected to be prepared for submission in 2004.

(d) ***Repertory of Practice of United Nations Organs* and *Repertoire of the Practice of the Security Council***

35. During the period under review, the Secretariat continued its efforts to reduce the backlog in the publication of the *Repertory of Practice of United Nations Organs*, as well as of the *Repertoire of the Practice of the Security Council*, in accordance with General Assembly resolution 57/24 of 19 November 2002. The status of the various Supplements of the *Repertory* and the *Repertoire* is set out in the report of the Secretary-General.[5] Moreover, the placement of *Repertory* studies on the Internet is being implemented, initially, in English and, subsequently, in French and Spanish.

(e) **Other publications**

36. In 2003, the Codification Division prepared for publication: a historical review of developments relating to aggression; a second edition of *International Instruments Related to the Prevention and Suppression of International Terrorism*; a summary of the judgments, advisory opinions and orders of the International Court of Justice, 1997-2002; an addition to the *United Nations Legislative Series* entitled "National Laws and Regulations on the Prevention and Suppression of International Terrorism, Part II"; and the sixth edition of *The Work of the International Law Commission*.

37. During 2003, the Division for Ocean Affairs and the Law of the Sea published No. 51 of the *Law of the Sea Bulletin*. This periodical updates information relating to the law of the sea and marine affairs, including national legislation, bilateral and multilateral treaties, and the decisions of international courts and arbitral tribunals. The Division also issued No. 17 in the *Law of the Sea Information Circular* series which presents information on any action taken by States parties in implementing the United Nations Convention on the Law of the Sea.

38. During 2003, the International Trade Law Branch published the Case Law on UNCITRAL Texts (CLOUT) abstracts Nos. 35 to 40, as well as a thesaurus and an index of the UNCITRAL Model Arbitration Law. UNCITRAL has also prepared CD-ROM compilations of, inter alia, UNCITRAL adopted texts; the UNCITRAL report on the status of ratifications and enactments of texts arising from the work of UNCITRAL; CLOUT abstracts and related research materials; and the UNCITRAL consolidated bibliography, in the six languages of the United Nations. The International Trade Law Branch regularly updates the bibliography as released on the UNCITRAL web site (www.uncitral.org).

6. Distribution of United Nations legal publications

39. Pursuant to paragraph 84 of the 2001 report of the Secretary-General on the Programme of Assistance (A/56/484), describing activities to be carried out during the biennium 2002-2003, and paragraph 1 of General Assembly resolution 56/77 authorizing their implementation, copies of United Nations legal publications issued during the period have been provided to the institutions in developing countries that have been receiving such publications under the Programme and to other institutions in a number of countries, in particular in the developing countries, for which requests for such publications have been made by the Member States concerned. The International Court of Justice continued to provide copies of its publications to institutions receiving assistance under the Programme.

B. Activities of the United Nations Institute for Training and Research

40. In addition to cooperation with the Office of Legal Affairs in organizing the Fellowship Programme, as referred to in section II.A.2 above, UNITAR in 2003 carried out a number of activities related to the teaching, study, dissemination and appreciation of international law, including: the Fellowship Programme on the International Civil Service jointly organized by the International Organization of la Francophonie (CAIF), the National School of Administration (ENA) and the Cameroon Institute of International Relations (IRIC) and held in Yaoundé, Paris and Geneva; tailor-made training courses on international environmental law, international trade law and commercial arbitration, as well as on international courts and tribunals, conducted in Geneva; the UNITAR training programme for the implementation of environmental law, including distance-learning courses, as well as workshops and seminars held in France, Japan and Madagascar; and a fully fledged training programme on the legal aspects of debt, financial management and negotiation, including a comprehensive e-learning instruction package. The UNITAR New York office also offered courses in international law. These included programmes jointly organized with the United Nations Treaty Section and with the Division for Ocean Affairs and the Law of the Sea, as well as the Study Programme for Diplomats conducted with Columbia Law School in New York.

III. Guidelines and recommendations regarding execution of the Programme in the biennium 2004-2005

A. General observations

41. In paragraph 15 of its resolution 56/77, the General Assembly requested the Secretary-General to report to it at the fifty-eighth session on the implementation of the Programme during 2002 and 2003 and, following consultations with the Advisory Committee on the Programme, to submit recommendations regarding the execution of the Programme in subsequent years.

42. The paragraphs below contain the guidelines and recommendations requested by the General Assembly in its resolution. In formulating such guidelines and recommendations, account has been taken of the fact that the Assembly did not

provide in the resolution for new budgetary resources for the Programme, but relied instead on financing such activities from the existing overall level of appropriations and voluntary contributions from States.

43. Therefore, in substance, the paragraphs below recommend that the United Nations and other agencies continue the current activities under the Programme and develop and expand them if new funds become available through voluntary contributions. In principle, new activities should only be undertaken if the overall level of appropriations or voluntary contributions make them possible.

B. Activities of the United Nations

44. *Geneva International Law Seminar*. It is expected that, if sufficient voluntary contributions from States continue to be made, new sessions of the Seminar will be held in 2004 and 2005 in conjunction with those of the International Law Commission. Scheduling of the sessions of the Seminar should be done in such a way as to make it possible to provide it with adequate services, including interpretation as required.

45. *Public international law and other activities*. During the biennium 2004-2005, the Office of Legal Affairs and its Codification Division are expected to continue performing the various functions connected with the goals of the Programme, as described in the present report, namely, participation in the International Law Fellowship Programme; regional refresher courses; training of interns; lecturing on international law topics; secretariat functions to the Advisory Committee and to the Sixth Committee on the item concerning the United Nations Programme of Assistance; and dissemination of information regarding the codification and progressive development of international law. With regard to the training of interns, geographical distribution is duly borne in mind in selecting interns and, at the same time, existing possibilities are fully taken advantage of, irrespective of nationality.

46. *Activities concerning the law of the sea and ocean affairs: the Hamilton Shirley Amerasinghe Memorial Fellowship*. The Office of Legal Affairs will continue to award at least one fellowship annually, in accordance with the rules and guidelines.

47. *Activities concerning international trade law*. The steps to promote training and assistance in international trade law are of particular concern to developing countries. The Secretary-General, through the International Trade Law Branch of the Office of Legal Affairs, will take the requisite action during the biennium 2004-2005 to implement the recommendations addressed to him in this regard by UNCITRAL and the General Assembly.

48. *Publications*. It is expected that the United Nations Secretariat will continue its efforts to reduce the backlog of the *United Nations Treaty Series*.[6] Efforts should also be continued by the United Nations Secretariat to ensure the publishing of matters of legal interest through the Internet on the United Nations home page as well as through other electronic media.

49. *Provision of United Nations legal publications*. Copies of United Nations legal publications issued during 2004 and 2005 will be provided to the institutions in developing countries that have been receiving such publications under the Programme and to other institutions in the developing countries for which requests

for such publications are made by the Member States concerned. Each new request will be reviewed on its own merits and the availability of the legal publication in question will also be taken into account.

50. *Fellowships and scholarships offered at national institutions*. Information received from Governments regarding the fellowships and scholarships offered at national institutions will, at the request of those Governments, be circulated to all Member States.

51. *International Law Fellowship Programme*. The International Law Fellowship Programme should be conducted as effectively and as efficiently as possible. A number of fellowships should continue to be awarded each year under the United Nations regular budget. Additional fellowships may also be awarded from the Trust Fund of the Programme of Assistance, depending upon the amount of the voluntary contributions received each year.

52. The Programme should also be open to a limited number of observers whose Governments are willing to cover the expenses of their observers.

53. Extreme caution should be exercised in the allocation of funds from the Trust Fund to finance administrative and other expenses of the Fellowship Programme. As in previous years, it is to be stressed that guidelines contained in General Assembly resolutions should be followed, in particular, the desirability of using, as far as possible, the resources and facilities made available by Member States, international organizations and others, as well as the need, in appointing lecturers for the seminars of the Fellowship Programme, to secure representation of the major legal systems and balance among various geographical regions.

54. As in previous years, in the implementation of the Fellowship Programme, maximum use should be made of the existing human and material resources of the Organization so as to achieve the best possible results within a policy of maximum financial restraint. Every effort should be made to enhance and maintain the high quality of the lecturers and the seminars. To the extent possible, teaching experts for the seminars should be selected from among the staff of the Organization, thus reducing to a minimum consultants' fees and making full use of the expertise of Organization staff in international law and related areas.

55. Beginning in 1998, the Fellowship Programme was conducted in a monolingual format, alternating between English and French. This change from the previous bilingual format reduced the cost of the Programme and also enhanced its quality. The monolingual format will continue for the 2004 and 2005 programmes.

56. Upon the invitation of the Office of Legal Affairs, UNITAR should continue to participate in those aspects of the Fellowship Programme as appropriate and in accordance with the guidelines set out above.

IV. Administrative and financial implications of United Nations participation in the Programme

A. Biennium 2002-2003

57. Among the activities carried out under the Programme during 2002-2003, the following items were related to allocations from the regular budget: the supply of

United Nations legal publications to institutions in developing countries; and the provision of a number of international law fellowships, determined in the light of the overall resources for the Programme (General Assembly resolution 56/77, para. 2 (a)).

58. The cost of the handling and shipping of United Nations legal publications to institutions in developing countries was covered under the relevant sections of the programme budget for the biennium 2002-2003 relating to administrative and common services.

59. The actual cost of producing the publications falls under the respective allocations for the substantive programmes to which each publication belongs.

60. As for the cost of provision by the United Nations of a number of fellowships determined in the light of the overall resources for the Programme, a total of $391,300 was proposed in the regular budget sources under section 8 (Legal affairs).

61. In accordance with paragraph 13 of General Assembly resolution 56/77, in which the Assembly reiterated its request to Member States and to interested organizations and individuals to make voluntary contributions towards the financing of the Programme, the Secretary-General addressed a note on 11 January 2002, and again on 30 December 2002, to Member States drawing their attention to resolution 56/77, as well as to the report of the International Law Commission.

62. For the Geneva International Law Seminar, the Governments of the following countries made contributions in 2002: Austria ($3,350); Finland ($3,500); Germany ($9,000); Mexico ($7,500); Norway ($2,205); Switzerland ($14,620); and United Kingdom of Great Britain and Northern Ireland ($7,285). In 2003, contributions were received from: Austria ($9,880); Cyprus ($425); Finland ($4,305); Germany ($11,240); Ireland ($2,100); Republic of Korea ($2,000); and Switzerland ($18,400).

63. For the International Law Fellowship Programme, the following countries made contributions during 2002 and 2003: Bahamas ($500); El Salvador ($1,000); Greece ($10,000); Monaco ($20,000); Sweden ($4,350); Trinidad and Tobago ($1,029); and United Kingdom ($47,580).

64. For the Hamilton Shirley Amerasinghe Fellowship on the Law of the Sea, the Governments of the following countries made contributions in 2002: Cyprus ($1,000); Monaco ($10,000); and United Kingdom ($69,690).

65. For UNCITRAL, the Governments of the following countries made contributions during 2002 and 2003: Singapore (Trust Fund for Travel Assistance — $2,000); France (Trust Fund for UNCITRAL Symposia — $44,400); Greece ($20,000); Mexico ($5,000); and Switzerland ($30,200).

66. For the United Nations Audio-Visual Library in International Law, a contribution of $3,000 was received from Mexico.

B. Biennium 2004-2005

67. Assuming that the recommendations regarding legal publications are adopted, the cost of handling and shipping the United Nations legal publications issued in 2004 and 2005 would be covered by the estimates under the relevant sections of the proposed programme budget for the biennium 2004-2005.

68. With regard to the provision of fellowships within the International Law Fellowship Programme during the biennium and possibly of travel grants for participants in regional refresher courses during 2004 or 2005, an amount of $404,600 is included in the proposed programme budget for the biennium 2004-2005 under section 8 (Legal affairs), assuming that the General Assembly approves the guidelines and recommendations on those programmes.

69. The Secretary-General would repeat his efforts, if the General Assembly so decides, in requesting voluntary contributions to the Programme. It is proposed that, as in past years, the funds accruing from such contributions have, as a main goal, subject to considerations of a practical nature, the increase of the number of fellowship grants to candidates from developing countries in addition to the minimum that would be authorized by the General Assembly under the appropriations from the regular budget.

V. Meetings of the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

A. Membership of the Advisory Committee

70. In accordance with paragraph 17 of General Assembly resolution 54/102 of 9 December 1999, the membership of the Advisory Committee for the period from 1 January 2000 to 31 December 2003 is as follows: Canada, Colombia, Cyprus, Czech Republic, Ethiopia, France, Germany, Ghana, Iran (Islamic Republic of), Italy, Jamaica, Kenya, Lebanon, Malaysia, Mexico, Nigeria, Pakistan, Portugal, Russian Federation, Sudan, Trinidad and Tobago, Ukraine, United Republic of Tanzania, United States of America and Uruguay.

B. Consideration of the reports of the Secretary-General by the Advisory Committee at its thirty-seventh and thirty-eighth sessions

71. In paragraph 15 of its resolution 56/77, the General Assembly requested the Secretary-General to report to the Assembly at its fifty-eighth session on the implementation of the Programme during 2002-2003.

72. As part of the preparation of the report requested under resolution 56/77, the Secretary-General prepared an interim report covering the activities carried out during 2002 by the various bodies that participated in the execution of the Programme, as well as a draft report covering the activities carried out in 2003.

73. At the thirty-seventh session of the Advisory Committee, held on 21 November 2002, the representatives of the following members of the Committee were present: Colombia, Czech Republic, France, Germany, Ghana, Italy, Kenya, Malaysia, Mexico, Pakistan, Portugal, Russian Federation, Trinidad and Tobago, Ukraine, United Republic of Tanzania and United States of America. Representatives of UNITAR and the Division for Ocean Affairs and the Law of the

Sea also attended. At the thirty-eighth session of the Advisory Committee, held on 16 October 2003, the representatives of the following members were present: Colombia, Cyprus, Czech Republic, Iran (Islamic Republic of), Italy, Kenya, Malaysia, Mexico, Portugal, Russian Federation, Trinidad and Tobago, United Republic of Tanzania and United States of America. Representatives of UNITAR and the Division for Ocean Affairs and the Law of the Sea also attended.

74. The thirty-seventh and thirty-eighth sessions of the Advisory Committee were chaired by Thomas Kwesi Quartey of Ghana.

75. George Korontzis, Senior Legal Officer, Codification Division, Office of Legal Affairs, acted as Secretary of the Advisory Committee at both sessions.

76. The Advisory Committee considered the Secretary-General's interim report of 2002 at its thirty-seventh session and the draft report of the Secretary-General at its thirty-eighth session.

77. At the thirty-seventh session, appreciation was expressed for the continued efforts of the Secretary-General to reduce the backlog in the publications *Repertory of Practice of United Nations Organs* and *Repertoire of the Practice of the Security Council*.

78. At both sessions, additional information was requested regarding the UNCITRAL seminars. It was pointed out that that information could be found in UNCITRAL annual reports and on its web site.

Notes

[1] OLA/UNPA/2003/CRP.1.

[2] The fellowship was originally awarded to a candidate from Saint Lucia, who was unable to take up the fellowship for personal reasons; the back-up candidate from Trinidad and Tobago was therefore awarded the fellowship.

[3] The recipient of the award was unable to take up the fellowship for personal reasons and there was not enough time to award the fellowship to the back-up candidate.

[4] The individuals from Seychelles (1994), Papua New Guinea (1998), Barbados (1999), Bulgaria (2001) and Colombia (2002) received Special Awards.

[5] See A/58/347.

[6] The time lag between the submission of a treaty and its publication has been reduced to a current level of two years.

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Financing of the United Nations Organization Mission in the Democratic Republic of the Congo

Proposed budget for the United Nations Organization Mission in the Democratic Republic of the Congo for the period from 1 July 2003 to 30 June 2004

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the proposed budget for the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) for the period from 1 July 2003 to 30 June 2004 (A/58/381). During its consideration of the report, the Committee met with representatives of the Secretary-General, who provided additional information and clarifications.

2. At its winter 2003 session, the Advisory Committee had before it proposed initial and revised budgets for MONUC for the period from 1 July 2003 to 30 June 2004 (A/57/683 and Add.1). However, as noted in paragraph 3 of its report (A/57/772/Add.10) on those documents, the Committee was informed that the Secretary-General would submit a report to the Security Council in May 2003 that would contain recommendations for an expanded role and new tasks for MONUC and that a new budget would be submitted for consideration that would reflect such action as the Council might take. Accordingly, the Committee recommended that the budget be maintained at $582 million and that the staffing table be maintained at 1,695 posts pending action by the Council and the submission of a new budget. The Committee also annexed detailed observations and recommendations to its report to be taken into account in the preparation of the new budget for 2003/04.

3. The mandate of MONUC is contained in paragraph 7 of Security Council resolution 1291 (2000) of 24 February 2000. In that resolution, the Council authorized the expansion of MONUC to consist of up to 5,537 military personnel, including up to 500 military observers or more, as deemed necessary by the Secretary-General. Subsequently, in its resolution 1445 (2002) of 4 December 2002,

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the Council authorized the expansion of MONUC to consist of up to 8,700 military personnel, principally comprising two task forces, to be deployed in phases. By its resolution 1493 (2003) of 28 July 2003, the Security Council expanded the mandate of MONUC and extended it to 30 July 2004. The Council also noted with appreciation the recommendations contained in the second special report of the Secretary-General on MONUC of 27 May 2003 (S/2003/566 and Corr.1) and authorized an increase in the military strength of MONUC to 10,800 personnel.

4. The proposed new budget for MONUC for the period from 1 July 2003 to 30 June 2004 (A/58/381) was prepared on the basis of the mandate of the Security Council in its resolution 1493 (2003). The Advisory Committee notes, as indicated in the summary of the proposed new budget, that the new estimates supersede the budgetary proposals contained in the previous reports of the Secretary-General on the financing of MONUC (A/57/683 and Add.1). The Committee has examined the estimates in the light of developments since the submission in May of its report on the previous estimates (A/57/772/Add.10).

II. Information on performance

5. The Advisory Committee was informed that, as at 30 September 2003, a total of $1,533,940,600 had been assessed on Member States in respect of MONUC since its inception. Payments received as at the same date amounted to $1,294,754,200 leaving an outstanding balance of $239,186,400. The cash position of the Mission as at that date was $249,900,000, and unliquidated obligations for the period from 1 July 2003 to 30 June 2004 amounted to $227,983,100.

6. The Advisory Committee was also informed that cost reimbursements for troops and formed police up to 24 September 2003 totalled $98,654,300, while the amount owed for the month of August was $7,321,400. With regard to contingent-owned equipment, the Committee was informed that, as at 24 September, an amount of $15,972,300 had been reimbursed, and the amount owed up to 31 August was $52,892,900, while unliquidated obligations totalled $68,646,300. In respect of death and disability compensation, $261,000 had been paid as at 24 September for six claims, two claims were pending and unliquidated obligations amounted to $2,877,700.

7. The Advisory Committee was provided with the following incumbency statistics for MONUC as at 30 September 2003:

Posts	*Authorized*[a]	*Encumbered*	*Vacancy/delayed deployment rate (percentage)*
Military observers	760	746	2
Military contingents	10 040	8 048	20
Civilian police	182	81	55
International staff	715	611	15
National staff	762	729	4
United Nations Volunteers	212	228	(8)

[a] Represents the strength approved for the period.

8. The Advisory Committee was also provided with expenditure data for the period from 1 July 2003 to 30 June 2004. Expenditures for the period as at 30 September 2003 amounted to $274,757,300 gross. Expenditures consisted of disbursements of $46,774,200 and unliquidated obligations of $227,983,100 against an apportionment of $582 million. **The Committee has expressed concern in the past about the need to monitor obligations; high levels of unliquidated obligations can be signs of a lack of proper planning and control (see also A/57/772/Add.10, annex, para. 7).**

III. Proposed budget for the period from 1 July 2003 to 30 June 2004

A. General comments

9. **The Advisory Committee commends the Secretariat for its attempt to prepare the estimates using results-based-budgeting techniques and encourages further improvement, taking into account the views expressed by the Committee in its previous reports on peacekeeping operations (A/57/772 and Add.10).**

10. **The Advisory Committee welcomes the information provided in section V of the new proposed budget report concerning follow-up action taken to implement requests and recommendations of the Committee, but notes also that the observations of the Committee are not fully covered therein and considers that some of the responses are inadequate (see, e.g., paras. 12 and 13 below).** The Committee recognizes that there has not been enough time to implement all of its recommendations and that many of them will have to be addressed in the context of the next budget estimate after budget performance results are available. **The observations of the Committee contained in its general report on peacekeeping operations (A/57/772) and in its report on the financing of MONUC (A/57/772/Add.10) remain valid and have been taken into account in the recommendations set out in the present report.**

11. **In future, the Advisory Committee recommends that information on action taken to implement the Committee's recommendations be incorporated into the narrative of the budget document and that section V be refashioned into an index that would serve as a guide to the relevant section of the narrative.**

12. **The Advisory Committee reiterates its observation that there has been a continuing and serious trend of overbudgeting for the Mission, despite the reductions recommended by the Committee (see A/57/772/Add.10, annex, para. 5).** Upon request, the Advisory Committee was provided with expenditure data for the period from 1 July 2002 to 30 June 2003 (see annex below). As indicated, expenditure for the period amounted to $479,952,000 gross against an apportionment of $581,933,500 gross, an underexpenditure of nearly $102 million. The Committee recalls that, in the original budget submission for that period, requirements were estimated at $603,911,000 gross (see A/56/897, table 1), which the Committee recommended reducing by $21,977,536 gross to $581,933,464 (see A/56/887/Add.11, para. 74). The expenditure of $479,952,000 is therefore $123,959,000, or approximately 20.5 per cent, less than the amount initially

estimated for the period. Similarly, as noted previously by the Committee (see A/57/772/Add.10, annex, para. 3), the original budget proposal for the 2001/02 period was $537.1 million gross. The Committee recommended an appropriation of $450 million gross (see A/56/845, para. 83), or a reduction of $87.1 million. Expenditure for the period amounted to $388.8 million, approximately $148 million, or 28 per cent, less than the amount initially estimated.

13. **Furthermore, although the issue of overbudgeting is addressed in section V of the proposed budget, the Advisory Committee does not consider the response adequate. There is an indication that a review has been undertaken, but no specific information is provided concerning the results of the review or specific action taken in response to those results.**

B. Resource requirements

14. As indicated in the proposed budget for MONUC, resource requirements for the period from 1 July 2003 to 30 June 2004 are estimated at $675,038,300 gross ($661,771,300 net), excluding voluntary contributions in kind in the amount of $2,274,000 (see A/58/381, sect. II.A). The estimate represents an increase of $93,104,800, or 16 per cent, in gross terms in relation to the apportionment for the period from 1 July 2002 to 30 June 2003 and an increase of $40,269,400 over the initial estimates submitted for the current period (see sect. II.A.1 of A/57/683 and A/57/683/Add.1). The estimate includes increases of $77,767,000, or 41 per cent, for military and police personnel; $11,628,200, or 11.9 per cent, for civilian personnel; and $3,709,600, or 1.3 per cent, for operational costs.

15. The estimate provides for 760 military observers, 10,040 military contingents, 182 civilian police, 938 international staff, 1,299 national staff and 419 United Nations Volunteers.

1. Military and police personnel

16. The Advisory Committee was provided with a table showing the status of expenditure for MONUC for the period 2003/04 as at 24 September 2003, which showed expenditures of $31.4 million out of the $227.7 million apportioned under military and civilian police personnel. Upon enquiry, the Committee was informed that the $31.4 million did not reflect the full picture, as it did not include fully obligated amounts for troop costs. The Committee was subsequently provided with a replacement table showing expenditure as at 30 September, which did include the fully obligated amounts for troop costs, bringing the level of expenditure to $151,460,900. **The Committee expresses concern that incomplete information can hinder its examination of the estimates in a timely manner and its formulation of recommendations based on facts. The Committee insists that it be provided in future with the most up-to-date expenditure and obligation information so that it may examine the estimates without requesting further clarification.**

17. The estimate of $266,930,300 for military and police personnel costs represents an increase of 41.1 per cent ($77,767,000) over the appropriation of $189,163,300 for the 2002/03 period. The variance is due to the increase, in accordance with Security Council resolution 1493 (2003), in the number of military and police personnel from 5,637, including 100 civilian police (the number that had

been authorized by the Council, in its resolution 1291 (2000), when the 2002/03 budget for MONUC was approved), to 10,982, including 182 civilian police, authorized for 2003/04 (see A/58/381, sect. II.B.1).

18. The Advisory Committee was informed that it was the intention of the Secretary-General to deploy military personnel to full strength by 30 June 2004. As at 30 September 2003, 8,794 military personnel and 81 civilian police were on board (see para. 7 above). The Committee notes that the delayed deployment rate for military contingents is currently 20 per cent. The Committee was informed that a delayed deployment factor of 25 per cent had been applied for a number of cost elements in respect of military contingent personnel, including troop cost reimbursement, recreational leave allowance, daily allowance, rations and reimbursement for contingent-owned equipment.

19. In the experience of the Advisory Committee, however, projected deployment rates for MONUC have traditionally proven optimistic when compared with actual implementation rates. **The Committee therefore doubts that the full additional amount of $77.7 million will be needed before the end of June 2004. It is also the experience of the Committee that, while the reimbursement of military and equipment costs is fully obligated during the financial period, for a variety of reasons, savings are traditionally realized in amounts previously obligated (see, e.g., A/57/772, paras. 60-76, regarding the management of contingent-owned equipment arrangements).**

20. The estimate for military observers amounts to $41,393,500, a decrease of $7,187,900, or 14.8 per cent, in comparison with the apportionment for the 2002/03 period. The decrease is due to the reduction in the number of military observers from 810 to 760. The Advisory Committee was informed that no delayed deployment factor had been applied for military observers; however, incumbency as at 30 September 2003 was 746, for an actual delayed deployment rate of 2 per cent.

21. The cost estimate for travel related to the emplacement, rotation and repatriation of military and police personnel amounts to approximately $29 million. The overall increase of $3,740,700 under this item, in comparison with the apportionment for 2002/03, includes an increase of $7,743,900 for military contingents, offset in part by decreases of $3,973,100 for military observers and $30,100 for civilian police. The decrease for military observers is due to the decrease in the number of observers from 810 to 760. The Advisory Committee enquired as to the extent to which it would be possible to transport troops that come from the region using United Nations-owned aircraft rather than charter aircraft. The Committee was informed that at present the Mission had only one fixed-wing passenger aircraft that would be suitable for troop movements outside of the mission area and that the use of that aircraft for such purposes would be at the expense of internal support operations. However, the Mission's aircraft fleet is to be expanded shortly through the contracting of additional fixed-wing passenger aircraft, which would increase the capacity of the Mission to take on such flights. **The Committee requests the Mission to explore this possibility.**

22. The estimate for rations amounts to $17,340,800, an increase of $4,166,300 over the apportionment for 2002/03. The variance is based on the increase in the number of contingent personnel to 10,040 and a delayed deployment factor of 25 per cent. In its previous report on MONUC, the Advisory Committee commented in some detail on the issue of delivery of rations. It had been informed of an additional

requirement of $7.2 million in connection with the use of the contractor's aircraft to distribute rations.[1] The Committee had requested the Secretariat to consider possible alternatives to this arrangement and to properly justify the results in the new budget submission for MONUC (see A/57/772/Add.10, annex, paras. 25 and 26). The proposed budget (A/58/381) contains no information on follow-up to the Committee's recommendations on this issue. The Committee understands that MONUC is currently delivering rations. The Committee was informed that, as a consequence of the increase in the authorized troop strength, the reconfiguration of the deployment of military contingents and the projected opening of a third warehouse, in Uganda, the results of a previously undertaken cost-benefit analysis were no longer valid. The Mission intends to conduct a new cost-benefit analysis upon receipt of a new proposal from the contractor. It was explained to the Committee that a number of considerations would be taken into account apart from the cost. Among these were the advantage of having the contractor assume all operational risks, such as food spoilage and subsequent replacement or replenishment, the efficiency and effectiveness of the supply chain management and possible additional air capacity freed up for use by the Mission.

23. The Advisory Committee notes from paragraph 84 of the proposed budget that one P-3 post and one national staff post have been budgeted to coordinate the distribution of rations to contingents from the contractor's warehouse in Kigoma, United Republic of Tanzania. The Committee requested information concerning the possibility of having rations delivered directly to troop location sites rather than to warehouses, which are owned by the contractor. The Committee was informed that the cost of operating the warehouses was included in the contract for rations. The Committee was also informed that the results of the original cost-benefit analysis mentioned above indicated that the delivery of rations to troop locations from two warehouses, in Kinshasa and Kigoma, would result in annual savings for the Organization ranging from $1.1 million to $2.1 million.

24. The Advisory Committee was informed that the per-person cost of rations was estimated at $6.20 per day, as compared with $6.34 per day in the budget submission for MONUC for 2002/03. The Committee enquired as to why there had not been a greater decrease in costs given the significant increase in the number of troops, but no satisfactory answer was provided. **In the opinion of the Committee, economies of scale should have been achieved as a result of the increase in troop strength.**

25. The estimate for contingent-owned equipment amounts to $67,230,400, of which $34,470,300 is for reimbursement for self-sustainment costs (see A/58/381, para. 6). The Advisory Committee was informed that the estimate for self-sustainment took into account actual requirements of $26.3 million in respect of troops deployed as at 31 August 2003 and included an estimated $8.2 million based on the phased deployment of troops in respect of which a 25 per cent delayed deployment factor had been applied.

26. Upon enquiry, the Advisory Committee was informed that of the 59 contingent units in place, memorandums of understanding had been signed in respect of 38 units, 15 were in the process of being reviewed and/or signed by the troop-

[1] This figure is based on a total of 7,940 troops. The increase in troop strength, in accordance with Security Council resolution 1493 (2003), would in all likelihood entail a consequent increase in the additional requirement related to the use of the contractor's aircraft for the distribution of rations.

contributing countries, 2 were being reviewed by the Department of Peacekeeping Operations, 3 were under negotiation and 1 was yet to be negotiated.

27. The estimate for reimbursement of major equipment amounts to $32,760,100, an increase of $10,262,300 over the apportionment for 2002/03 (ibid.). The Advisory Committee was informed that the increase was based on the actual troop strength as at 31 August 2003 (7,296) and the phased deployment of an additional 2,744 troops from 1 September 2003 in respect of which a 25 per cent delayed deployment factor had been applied. The Committee was given a deployment schedule, which provided for the deployment of 8,605 military contingent personnel as at 30 September and 9,875 as at 31 October. Upon enquiry as to whether the Mission was on schedule with those deployments, the Committee was informed that the deployed troop strength as at 30 September stood at 8,048 military contingent personnel as compared with the anticipated strength of 8,605. The Committee was also informed that it was expected that an additional 1,525 troops would arrive in October and a further 45 in November, bringing the total to 9,618 as at 30 November 2003.

2. Civilian personnel

28. The estimated requirements for civilian personnel for 2003/04, which provide for a total of 2,656 staff[2] (938 international staff, 1,299 national staff and 419 United Nations Volunteers) amount to $109,576,900, an increase of $11,628,200 over the apportionment for 2002/03. In the last budget document examined by the Advisory Committee, the estimate was $109,879,500 for a total of 2,435 staff (see A/57/683/Add.1, summary). The current proposal represents an increase of 223 international staff, 537 national staff and 207 United Nations Volunteers over the approved staffing for 2002/03 (see A/58/381, summary, and para. 8). The Committee was informed that the estimates reflected the application of a 10 per cent vacancy rate for national staff on board as at 31 August 2003 coupled with a 10 per cent delayed recruitment factor for proposed additional national staff. For international staff, the computation of salaries and related costs reflects a 20 per cent vacancy/turnover factor in respect of staff on board as at 31 August 2003, as well as a 30 per cent vacancy rate in respect of 331 staff (108 vacant posts plus the proposed additional 223 posts). A 10 per cent vacancy factor has been applied in respect of living allowances for United Nations Volunteers. The provision also reflects the application of approved salary scales at the G-2, step 1, level for Local level national staff and the entry-level scale for National Professional Officers. Upon enquiry, the Committee was informed that those levels were used throughout the Mission.

29. In its previous report on MONUC, the Advisory Committee noted the traditionally high vacancy rates at the Mission and expressed its belief that the vacancy factors proposed for 2003/04 were optimistic (see A/57/772/Add.10, annex, paras. 29-31). As indicated in section V of the proposed budget, vacancy rates for international staff as at 31 August 2003 had dropped to 15 per cent from the 38 per cent average noted in the Committee's report (ibid., para. 29). **The Committee trusts that efforts to increase recruitment and improve the vacancy situation will continue.**

[2] Excludes six posts (5 international and 1 national staff) for the Office of Internal Oversight Services funded from the support account for peacekeeping operations.

Organizational structure of the Mission

30. The proposed staffing establishment and structure reflect the results of a review of the Mission's staffing requirements (see A/58/381, para. 8). **The Advisory Committee notes that many small units have been established with chiefs at the P-4 level and above and very few staff for them to supervise. The administrative structure as proposed tends to inflate grade structure and exacerbate the duplication of functions.**

31. The Advisory Committee questions, for example, the rationale for setting up a separate Mandate Planning and Tracking Unit, which would appear to duplicate the work of all the other substantive units of MONUC that deal with or should be fully involved in mandate implementation, tracking and reporting. Furthermore, the Mandate Planning and Tracking Unit and the Political Analysis and Reporting Unit would appear to be responsible for more or less analogous functions. **In order to ensure that heads of divisions and units, especially at the Mission's headquarters and field stations, are fully accountable with regard to mandate implementation, they should have distinct and identifiable functions.**

32. As regards the Transition Support Unit in the Political Affairs Division, the Advisory Committee points out that the entire Mission is charged with the function of supporting the transition process in accordance with the mandate of the Security Council contained in its resolution 1493 (2003). If, however, the Unit's primary responsibility is to support the International Committee in Support of the Transition, then the grades and number of posts requested (1 D-1, 2 P-5, 3 P-4, 1 P-3, 2 P-2, 2 General Service (Other level), 1 national staff and 1 United Nations Volunteer) would seem excessive. The functions ascribed to those posts appear to combine the servicing of the Committee with substantive work done elsewhere in MONUC, such as the preparation of policy recommendations based on political activities and developments in civil society (see ibid., paras. 26 and 27). The Committee also notes that the Political Affairs Division has two D-1 posts, one of which is designated as Deputy Director of the Division and the other as the head of the Transition Support Unit. The Committee sees no reason why the Deputy Director could not have line functions over a Transition Support Unit headed by a P-5 staff member, as is the case for the Political Analysis and Reporting Unit, which is the other unit in the Division.

33. Furthermore, as can be seen from the proposed budget (ibid., para. 10 and sect. VI), a number of mechanisms have been set up to provide for direct reporting to the Special Representative of the Secretary-General. The Advisory Committee is concerned that this may weaken the role of the Deputy Special Representatives. Furthermore, the busy travel schedules of the Special Representative and the Deputy Special Representatives may render this arrangement difficult.

34. The proposed staffing of the Electoral Assistance Division provides for only three Professional and one General Service staff (ibid., para. 35). Upon enquiry, the Advisory Committee was informed that a team of electoral experts from the Electoral Assistance Division of the Department of Political Affairs was currently visiting MONUC to conduct the first phase of a two-phase electoral feasibility study. The second phase is planned for the end of October. It is anticipated that the report of the team will provide a draft outline on the electoral process. Elections are expected to be held sometime during the second half of 2005. The Committee will

revert to the issue at such time as the Secretary-General submits recommendations thereon to the Security Council and the General Assembly.

35. The Advisory Committee notes that staffing of the Division of Disarmament, Demobilization, Repatriation, Resettlement and Reintegration is to consist of 21 international staff, 10 national staff and 12 United Nations Volunteers (ibid., paras. 37-39). On the basis of the information provided during its hearings with the Special Representative and other representatives of the Secretary-General, as well as the information contained in the estimates, the Committee concludes that neither the disarmament, demobilization and reintegration programme, which is directed at Congolese combatants, nor the disarmament, demobilization, repatriation, resettlement and reintegration programme, which is to deal with foreign combatants in the Democratic Republic of the Congo, is effectively operational. The estimates are therefore based on the best guess of what could be required from the assessed budget.

36. The proposed staffing of the Human Rights Section provides for 42 international staff, 31 national staff and 20 United Nations Volunteers (ibid., paras. 54-56). No mention is made in the proposed budget of cooperation and coordination between this section and other United Nations entities dealing with human rights in the region, such as the Office of the United Nations High Commissioner for Human Rights and special rapporteurs of the Commission on Human Rights. **The Advisory Committee stresses the importance of such cooperation in order to avoid duplication of work, and requests that information on this issue be included in the next budget submission.**

37. **In view of its comments in paragraphs 30 to 36 above, the Advisory Committee requests that the organizational structure be re-examined with a view to streamlining processes and avoiding duplication.** The Special Representative of the Secretary-General informed the Committee that a review of the senior structure of the Mission would be undertaken towards the end of the financial period, including the requirement for two Deputy Special Representatives. **The Committee welcomes this information and requests that its observations in the foregoing paragraphs be taken into account in this and in the broader review it has requested.**

Recruitment and delegation of authority

38. Upon enquiry, the Advisory Committee was informed that the Director of Administration of MONUC had not been granted delegation of authority for the recruitment of international staff. In this connection, the Committee recalls the opinion it expressed in its general report on peacekeeping operations that missions should have greater authority in the hiring and management of staff (A/[illegible]772, para. 84).

39. The Advisory Committee also recalls that it had been informed that when the new staff selection system (Galaxy) was implemented, the time frame for filling vacancies in peacekeeping operations would be reduced (ibid., para. 79). Upon enquiry concerning progress in that regard, the Committee was informed that the Department of Peacekeeping Operations was undertaking a pilot project together with the Office of Human Resources Management to test the Galaxy system in the peacekeeping context. The results to date have not been positive: the system is proving to be very labour-intensive, as it has no means of screening applicants'

qualifications, and therefore many applications (in one case 400 applications for one post) had to be reviewed to determine whether the applicant possessed the minimum qualifications for the post. The Department is therefore currently using its own separate system in which vacancies are posted on the Department's web site, which can be accessed through a link from the Galaxy system.

40. **The Advisory Committee requests that progress made on the management of vacancies and the timely recruitment and placement of mission personnel be reported in the context of the next budget submission. The Committee will review the implementation of the Galaxy system in peacekeeping operations when it considers the proposed budget of the support account for peacekeeping operations in February 2004.**

3. Operational costs

41. The overall estimate for operational costs amounts to $298,531,100, an increase of $3,709,600, or 1.3 per cent, over the apportionment for the 2002/03 period (A/58/381, sect. II.A.1). The detailed comments made by the Advisory Committee on operational expenditures in its previous report on MONUC remain valid (see A/57/772/Add.10, annex, paras. 35-58).

Air transportation

42. The major expenditure under this item, accounting for $166,115,800, or 56 per cent of the estimated requirements, is for air operations. The estimate represents an increase of $11,115,800, or 7.2 per cent, over the apportionment for the 2002/03 period. As indicated in the proposed budget, the main factor contributing to the increase is the deployment of eight additional aircraft (1 fixed-wing aircraft and 7 helicopters), bringing the Mission's fleet to 54 (25 fixed-wing aircraft and 29 helicopters) (see A/58/381, paras. 114 and 115). The requirement for additional aircraft and the reconfiguration of the Mission's fleet reflect the logistical support requirements arising from the deployment of military personnel to the Ituri region and Bunia and the deployment of additional civilian and military personnel to locations in the east of the country, as well as limitations on the use of fixed-wing cargo aircraft stemming from the insufficient length and/or quality of runways. Additional costs were partially offset, however, by reductions under helicopters as a result of the application of more realistic projections, based on experience, in respect of the utilization of contractual and those under letter-of-assist arrangements.

43. In its previous report on MONUC, the Advisory Committee commented in detail on the Mission's air operations and the airfield services contract (see A/57/772/Add.10, annex, paras. 39-50). **The Committee appreciates, in particular, the attempt made by the Secretariat to justify the need for technical, administrative and management staff with functions relating to air operations.**

44. Upon request, the Advisory Committee was provided with a progress report on its recommendation that the Secretariat examine and clarify the various methods for costing block hours, together with the relative merits of commercial hiring versus letter-of-assist arrangements (see ibid , para. 43). The Committee was informed that the current practice of contracting for the guaranteed flying hours was in compliance with industry norms and that deviation from such norms entailed the risk of

attracting fewer carriers, narrowing the spectrum of available bidders, and that it could expose the Organization to undesirable liabilities.

45. The Advisory Committee was informed that for 2003 the basis for evaluating bids had changed, with awards going to carriers whose anticipated utilization represented the lowest cost, rather than to the operator with the lowest price for the maximum number of flying hours. The Committee was also informed that the number of guaranteed flying hours was determined as realistically as possible to avoid the risk of underutilization. In addition, the contracts provided for utilization of guaranteed hours on an annual basis so that unused hours from one month would be carried forward for use in subsequent months.

46. The Advisory Committee was further informed that the procurement of long-term air transportation services through letters of assist had proven to be more costly, as the Mission was obliged to provide accommodation and food for aircrews that were not included in the cost of flying hours. Furthermore, commercial air carriers operating under wet-lease contracts were responsible for aircraft maintenance and insurance costs, as well as for crew rotation costs.

47. **The Advisory Committee understands from the information provided to it that the examination of the issues mentioned in paragraphs 44 to 46 above is ongoing. The Committee requests that a further progress report be provided in the context of the next budget submission.**

48. The Advisory Committee questioned the operational necessity of having five small aircraft, and was informed that adjustments to the air fleet would be made in the near future. **The Committee recommends that the Mission examine the possibility of obtaining more versatile aircraft.**

49. **The Advisory Committee also requests that the next budget submission contain information on progress achieved in increasing the capacity to move personnel and material by land and river with a view to mitigating the expanding use of costly air assets. The Committee has commented in previous reports on the need for critical investment in this area (see A/56/887/Add.11, para. 61, and A/56/845, para. 72). The Committee considers that such investment should involve not only short-term mission requirements, but also long-term investment by partners in the international community operating in the mission area. The Committee stresses the importance of close cooperation among all the United Nations entities in the region in this matter.**

50. **The Advisory Committee further requests that the Mission look into the feasibility and cost-effectiveness of outsourcing medical evacuations and report thereon in the context of the next budget submission for MONUC.**

Ground transportation and information technology equipment

51. **On the basis of additional information provided to the Advisory Committee concerning ratios for vehicles and information technology equipment, the Committee observes that, in view of the air transportation available to the Mission, there is a need to examine more critically the justification for continuing without modification the use of standard vehicle ratios for MONUC. The Committee requests that this issue be addressed in the next budget submission. Furthermore, the Committee questions the need for one computer for every two national staff, given the fact that many national**

staff are drivers or perform other functions that would not require electronic data-processing equipment. The Committee also questions the provision of computers and printers to contractual staff.

Travel and training

52. The Advisory Committee was provided with a breakdown of travel costs for both training and non-training purposes. The bulk of the estimate for non-training travel, which amounts to $3,062,027, is for travel between New York and the Mission for planning and assessment purposes or for administrative or technical support. **In the opinion of the Committee, the need for much of this sort of travel could be reduced through greater use of videoconferencing, especially between the Mission and New York.** The Committee has commented on this matter in its general report on peacekeeping operations (see A/57/772, paras. 123 and 124). The Committee also notes that in many instances more than one staff member is to travel to the same meeting. **The Committee believes that some savings could be achieved by reducing the number of staff travelling to the same meeting.**

53. The estimate for training amounts to $1,103,203, including $880,791 for travel, and provides for the training of 1,278 staff. The Advisory Committee notes that a number of training courses are scheduled in locations that are quite a distance from mission headquarters in places such as Singapore and the United States of America (e.g., California and Georgia). **The Committee is of the view that nearer training opportunities could be found, thus reducing the cost of travel-related training**. The Committee has commented extensively on training issues in the peacekeeping operations in its general report (see A/57/772, paras. 127-133), as well as in its report on the financing of MONUC (A/57/772/Add.10, annex, para. 58). The Committee will follow up on this issue in the context of its next general report on peacekeeping operations.

Regional and liaison offices

54. **The Advisory Committee emphasizes the need to continue to review the level of resources and the rationale for the number of regional and liaison offices in the light of both developments and progress achieved in mandate implementation.**

IV. Recommendations of the Advisory Committee

55. The action to be taken by the General Assembly in connection with the financing of MONUC for the period from 1 July 2003 to 30 June 2004 is indicated in paragraph 123 of the proposed budget (A/58/381). **In view of its comments in paragraphs 12, 19, 24, 27, 37 and 51 to 53 above, the Advisory Committee recommends appropriation of an amount of $59,038,300, in addition to the amount of $582 million gross ($572,289,264 net) already appropriated and assessed by the Assembly in its resolution 57/335 of 18 June 2003 for the maintenance of the Mission for the 12-month period from 1 July 2003 to 30 June 2004. The Committee's recommendation represents a reduction of $34 million, or approximately 5 per cent, with respect to the proposed requirements. The Committee further recommends that the total amount assessed for the period at this time should not exceed $582 million gross**

($572,289,264 net). The Committee will review the situation when it examines the estimates for the 2004/05 period. At that time, more information will be available on the role of the Mission in the disarmament, demobilization and reintegration programme and the disarmament, demobilization, repatriation, resettlement and reintegration programme, as well as in the electoral process.

Annex

Summary of the performance of financial resources (1 July 2002-30 June 2003)

(Thousands of United States dollars)

Category	*Apportionment*	*Expenditure*
Military and police personnel		
Military observers	48 581.4	38 669.2
Military contingents	134 444.1	115 455.6
Civilian police	6 137.8	2 848.8
Formed police units	-	-
Subtotal	**189 163.3**	**156 973.6**
Civilian personnel		
International staff	86 308.8	79 417.7
National staff	5 590.5	6 751.2
United Nations Volunteers	6 049.4	7 352.6
Subtotal	**97 948.7**	**93 521.5**
Operational costs		
General temporary assistance	-	97.2
Government-provided personnel	-	-
Civilian electoral observers	-	-
Consultants	-	-
Official travel	1 784.8	5 249.4
Facilities and infrastructure	71 962.4	50 658.4
Ground transportation	14 041.3	15 754.6
Air transportation	155 000.0	116 220.4
Naval transportation	3 903.0	2 651.5
Communications	18 690.0	15 325.7
Information technology	5 035.4	6 088.1
Medical	7 710.9	4 547.0
Special equipment	2 872.3	1 585.8
Other supplies, services and equipment	13 821.4	11 178.8
Quick-impact projects	-	100.0
Subtotal	**294 821.5**	**229 456.9**
Gross requirements	**581 933.5**	**479 952.0**
Staff assessment income	9 644.2	10 037.6
Net requirements	**572 289.3**	**469 914.4**
Voluntary contributions in kind (budgeted)	2 747.4	1 780.2
Total requirements	**584 680.9**	**481 732.2**

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Financing of the United Nations Organization Mission in the Democratic Republic of the Congo

Proposed budget for the United Nations Organization Mission in the Democratic Republic of the Congo for the period from 1 July 2003 to 30 June 2004

Report of the Advisory Committee on Administrative and Budgetary Questions

Corrigendum

Paragraph 21

The fourth sentence *should read*

The Advisory Committee enquired as to the extent to which it would be possible to use aircraft already at the disposal of the United Nations for transporting troops that come from the region, rather than incurring further expense for additional aircraft.

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Fifty-eighth session
Agenda item 117 (c)
Human rights questions: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in Burundi

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the General Assembly the interim report on the human rights situation in Burundi prepared by Marie-Thérèse A. Kéita-Bocoum, Special Rapporteur on the situation of human rights in Burundi, pursuant to Commission on Human Rights resolution 2003/16, endorsed by the Economic and Social Council in its decision 2003/241.

Summary

The Special Rapporteur has the honour to submit to the Third Committee of the General Assembly her seventh report on the human rights situation in Burundi, pursuant to Commission on Human Rights resolution 2003/16. This report follows her seventh mission to Burundi, which took place from 11 to 19 May 2003, several days after the inauguration of President Domitien Ndayizeye. It covers the period from March to August 2003. President Ndayizeye succeeded President Buyoya, who headed the first 18 months of the transition period. Since the return of the Special Rapporteur, Burundi has once again seen a number of very violent clashes in and around Bujumbura between rebel troops — particularly those of the Parti pour la libération du peuple hutu-Forces nationales de libération (PALIPEHUTU-FNL) under Agathon Rwasa — and the regular army. There was also fighting between troops of the Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie (CNDD-FDD) under Pierre Nkurunziza and government troops. There were more or less continual clashes between the principal combatants until the end of August, when fighting even broke out among FNL troops.

* This report is being submitted on 20 October 2003, so that it will contain as much updated information as possible.

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I. Introduction

1. During her mission, the Special Rapporteur met top-ranking political leaders, including the new President of the Republic, the new Vice-President of the Republic, the members of the Government — who were mostly reappointed — the President of the Senate and the Second Vice-President of the National Assembly, two former presidents of the Republic and representatives of political parties and forces of all persuasions. She had interviews with representatives of national and international human rights organizations. She travelled to the province of Gitega, where she visited the Batwa community and the prison inmates. She met detainees in the central prison of Mpimba, especially minors and women.

2. The Special Rapporteur wishes to thank all those whom she met for their courtesy, availability and contribution to the success of her mission. She expresses her deep gratitude to the Director of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Burundi and his team, the heads of United Nations agencies, the Special Representative of the Secretary-General for Burundi, the Special Representative of the Secretary-General for the Great Lakes region and the Special Representative of the African Union for Burundi for their goodwill gestures and their contribution to the progress of the mission.

3. The political climate in which the Special Rapporteur's mission took place was relatively calm owing to the grace period granted to the new President of the Republic and his team. Subsequently, and fairly rapidly, the situation deteriorated and an atmosphere of violence once again ensued.

4. In June, the Special Rapporteur was invited to attend the meeting in Caux (Switzerland) between official representatives of the Burundian Government and FNL.

5. Given the close links which the Special Rapporteur again noted during this mission between the political, economic and social situation and the development of human rights, she will begin her report with an outline of the general political situation, placing the usual emphasis on developments in the peace process. She will then analyse the situation of human rights, justice and the strengthening of the rule of law. Lastly, she will present her observations and her recommendations for an improvement in the human rights situation in Burundi.

II. General situation

A. Political situation

6. During her mission, the Special Rapporteur noted that the change of power, on 1 May 2003, and the adoption of several laws provided for in the Arusha Peace and Reconciliation Agreement for Burundi had been well received by the majority of the political community, the labour unions, human rights organizations and representatives of the media. That offered new prospects for an improvement in human rights in Burundi. Furthermore, the base for the formation of the Government has been widened with the appointment of three ministers from the Front de la libération nationale (FROLINA), CNDD-FDD (Jean-Bosco Ndayikengurukiye wing) and FNL (Alain Mugabarabona wing) respectively.

1. Security situation

7. The security situation, which has shown no meaningful improvement since the beginning of the year, remains very disturbing in general. In fact, the agreements signed by the Government with CNDD-FDD (Jean-Bosco Ndayikengurukiye wing) and FNL (Alain Mugabarabona wing) have become a dead letter, as the ceasefire has not been respected and, in nearly the whole of the country, clashes between the army and armed rebel groups have been reported.

8. In April 2003, the capital, Bujumbura, came under heavy bombardment. Observers suggested that CNDD-FDD and FNL might have concluded an alliance resulting in increased fighting. The rebel groups used rocket launchers to bombard the capital and its surroundings. This caused many civilian victims and mass population movements, looting of property and serious destruction of schools and health infrastructure. Rising banditry and juvenile delinquency aggravated the situation. In the eastern part of the country, the inhabitants often spent the night outside their houses for fear of attacks by armed men. Women of all ages and young boys, being particularly vulnerable, often fell victim to sexual violence.

9. Throughout the period under review, the security situation remained disturbing. Numerous arbitrary arrests, kidnappings and murders continued, especially directed against local civilian officials (district and sector heads and commune officials) and various high-ranking political leaders.

10. In June 2003, in the commune of Gisuru, province of Ruyigi, CNDD-FDD rebels abducted 11 members, including 4 parliamentarians,[1] of the Front pour la démocratie au burundi (FRODEBU), the party in power. On 30 June, positions of the African Union forces, responsible for supervising the confinement to camp of the former Burundian rebels in Bubanza province, were attacked by unknown assailants firing automatic weapons; four attackers were killed during the fighting. CNDD-FDD, strongly suspected, denied any responsibility for these attacks.

11. During the night of 6/7 July 2003, FNL troops attacked the areas of Musaga, Kanyosha, Kibenga and Kinindo and the Muzenga district of Bujumbura-Urban. These attacks continued until 9 July. The violent fighting claimed many civilian victims and forced part of the population to take shelter in the town centre. The army lost no time in responding with heavy fire.

12. On 8 July 2003 the rebels fired shells randomly into Bujumbura, leaving many casualties and serious material damage. Some electric pylons were hit, causing a three-day power cut affecting most of the capital. Vehicles of the United Nations Development Programme (UNDP) were also damaged, and some of the inmates of the Mpimba central prison were hit by stray bullets.

13. On 13 July 2003 the town centre was attacked and many child soldiers were trapped and massacred.

14. The FNL attacks were roundly condemned by the international community, particularly the Security Council, which called on FNL immediately and unconditionally to end its offensive and to engage without further delay in serious

[1] These are elected officials of Ruyigi: Léonidas Ntibayazi, President of the parliamentary group of FRODEBU and President of the Human Rights Commission of the National Assembly, Pierre Barusasiyeko, Under-Secretary-General of the National Assembly, Ms. Véronique Nizigama and Fabien Bazirinyakamwe. The latter two were released on 2 July.

negotiations with the Transitional Government. Reaffirming its full support for the Arusha Peace and Reconciliation Agreement for Burundi and the subsequent ceasefire agreements, signed on 7 October and 2 December 2002, the Council again appealed to all parties, particularly CNDD-FDD of Pierre Nkurunziza and FNL of Agathon Rwasa and also the Transitional Government, to undertake in good faith to settle peacefully the questions pending by way of negotiation, and invited them to respect the agreements they had signed[2].

15. At the end of August 2003, FNL and CNDD-FDD rebel troops fought each other. This resulted in many casualties and mass displacement of the civilian population.

2. Developments in the peace process

16. Implementation of the Arusha Agreement has been slowed down by the lack of a ceasefire, jeopardizing the many reforms envisaged, such as communal elections, planned for the 19th month of the transition. However, the Special Rapporteur noted some significant advances. For instance, as previously stated, the transfer of power took place on the appointed date. Mr. Domitien Ndayizeye and Mr. Alphonse Kadege were appointed President and Vice-President of the Republic respectively for the second half (18-month) of the transition period.

17. During her visit the Special Rapporteur was informed of the arrival of the military observers and the first contingent of troops of the African Union peacekeeping force. A second contingent was sent on 1 July 2003, several days after the attack on its Buramata camp site.

18. The same period saw the return to the country of some rebel chiefs or their representatives, while refugees continued to return at a more or less regular rate. Laws envisaged in the Arusha Agreement were passed or were under consideration. Such is the case with the draft law on the suppression of genocide, crimes against humanity and war crimes, the law on provisional immunity from prosecution of politically motivated crimes committed before the signing of the Agreement, and the act on the membership of the Truth and Reconciliation Commission. The National Commission for the Rehabilitation of *Sinistrés* (Survivors) was also installed.

19. For a rather short time, these advances helped attenuate the climate of tension that preceded 30 April, the date of the transfer of power. But attacks by various armed groups around Bujumbura and in the country's interior, followed by reprisals by the national forces, continued to cause suffering to the civilian population.

20. The Arusha Agreement Implementation Monitoring Committee ended its thirteenth session on 23 May 2003 and decided to transmit a memorandum to the President of the Republic without disclosing its contents. It refused the request to include the parties non-signatories to the Agreement in the Implementation Monitoring Committee or the transitional institutions and requested a review of the law governing the National Commission for the Rehabilitation of *Sinistrés* (Survivors).

21. At the end of May, the President of the Republic paid several visits to the interior, including the provinces of Gitega and Ruyigi, which were the scene of

[2] Press release of the President of the Security Council of 10 July 2003.

conflict. He pleaded in favour of the Arusha Agreement, which, in his view, contained all the answers to the questions raised by the people of Burundi.

22. At the beginning of June, representatives of FNL (Agathon Rwasa wing) and the Transitional Government met in Caux (Switzerland) at a round-table conference organized by the non-governmental organization "Initiatives of Change", which was also attended by representatives of the diplomatic corps and the European Union. The Special Rapporteur was invited as an observer. The purpose was not clearly defined; in fact the FNL representatives said they would not talk to the representatives of the Transitional Government, but rather would talk to the Tutsi representatives, on the grounds that FNL had problems not with the Hutus, but with the Tutsis. The meeting did take place, however. While no significant step towards peace or even towards a ceasefire between the two factions was noted, the meeting at least had the merit of enabling them to engage in frank dialogue.

23. A Security Council mission visited Bujumbura from 12 to 14 June 2003 to support the second phase of the transition at a time when the peace process was facing new challenges. The mission decided to focus its efforts on the cessation of hostilities, support for the African Mission in Burundi, mobilization of economic and financial assistance, and the fight against impunity, including the principle of an international judicial commission of inquiry set forth in the Arusha Agreement.

24. On 26 June, about 25 combatants of PALIPEHUTU-FNL (Alain Mugabarabona wing) returned to the African Union's Muyinga-Buramata camp in Bubanza province.

25. Despite efforts deployed in Burundi and elsewhere during the period in question, nothing significant has occurred to realize the hopes raised with the transfer of power or to strengthen or even confirm the commitments undertaken by the belligerents with the signing of the agreements at the end of 2002. On the contrary, the belligerents have not respected any of the agreements signed, and the FNL rebels who refused to sit down at the negotiating table continue to turn a deaf ear to the national and international communities' appeals for peace.

26. Meetings between the rebel leaders and the Transitional Government are planned to be held in the United Republic of Tanzania and South Africa. The success of these negotiations would be a giant step towards peace.

B. Economic and social situation

27. Poverty has increased and spread right across the country. Poverty rates have not changed since the previous report, and a substantial proportion of urban and rural households are living beneath the poverty line, a situation exacerbated by pillaging by armed gangs, members of the regular army and armed bandits, during which women and children are often assaulted and raped.

28. In June, however, following a breathtaking rise in prices during the previous months, prices of basic products appeared to stabilize, but with no effect on purchasing power, which has continued to fall.

29. At the social level, war and a fragile economy have continued to alter the social fabric. The number of children, women and the elderly weakened by an unstable life and the violent conflict has increased, while their protection and care

have not been effectively guaranteed. These still constitute the bulk of victims of human rights violations. What is more, the difficult living conditions of the Burundian people, and the State's financial problems have evidently made it impossible to ensure adequate respect for economic, social and cultural rights, even when the will was there.

III. Human rights situation

30. Unfortunately, none of the efforts made by the various parties have led to peace, so that whatever positive impact they may have had on the human rights situation in Burundi has been very limited or non-existent. During the entire period in question, human rights violations observed during earlier missions were again brought to the Special Rapporteur's attention. Everyone she spoke to deplored the persistence of such violations, even though they did not all proffer the same explanations. Attacks on civil and political rights continue to abound, while the impunity that has surrounded the actions of certain groups, especially members of the regular army and the rebel groups, has continued to fuel the already widespread feeling of insecurity, curtailing the authorities' determination to fight it.

A. Civil and political rights

1. Violations of the right to life

31. The Special Rapporteur noted that, during the period under consideration, there continued to be numerous violations of the right to life. The perpetrators are the belligerents, armed bandits and persons unknown.

32. In recent months, the armed rebel groups' responsibility for such violations has apparently increased. On 17 March, two civilians were allegedly killed by rebels in Butaganzwa commune. The official figures for attacks in July stand at 10 rebels killed and 115 civilians wounded. No figures were given for the number of dead civilians.

33. An OHCHR Burundi office report stated that, according to the authorities, some 100 bodies had been buried in Kanyosha commune, Bujumbura-Rural province. Most were apparently civilians, since they were reportedly buried only after their families had identified the bodies. In the Musaga area, 17 people were reported to have been buried in a common grave and their bodies had later been exhumed and given a more decent burial. According to the OHCHR Burundi office observers, there are other common graves in the Busoro district (Kanyosha area). The reasons for the existence of the graves and the identity of the perpetrators are still unclear. However, the source reports that the common grave in the Musaga area had been dug by FNL rebels, and that at least 10 of the 17 bodies were civilians. The report states that people there were allegedly killed by the FNL rebels and that the grave contained at least three civilian families who had sought refuge in the concession or had lived there.[3]

[3] A family of five (father, mother and children) as well as a couple have reportedly been formally identified. The third family apparently comprises two or three people, making some 10 civilians in all.

34. According to official sources, 28 rebels were killed during the 13 July assault on the town centre. According to the OHCHR Burundi office report, there is agreement among reliable sources that the number might be higher, since many rebels and especially children had apparently been trapped in a ravine and unable to escape. The 19 bodies seen by the OHCHR Burundi office observers included some 10 children aged 9 to 15.

35. That propensity to use children in combat gravely violates international law and is utterly reprehensible. Moreover, to thrust patently inexperienced children in front of enemy weapons is to turn them into "cannon fodder" and offer them up as a sacrifice.[4] No firearm was found near those children's bodies, most of which were clad in rags, with cords attached to their waists. The position in which they were found suggests that they died while trying to escape, probably towards the neighbouring houses. They were doubtless gunned down by regular-army soldiers, without being given a chance to surrender. That is equally reprehensible.

2. Violations of the right to liberty, security and inviolability of the person

36. Violations of these rights still abound. Such violations are attributable to all the belligerents but also to persons unknown, bandits or unidentified persons. The Special Rapporteur was informed of the persistence of torture and arbitrary detention, particularly in military camps and locations inaccessible to OHCHR Burundi office observers.

(a) Violations attributed to agents of the State

37. A report of the United Nations Children's Fund (UNICEF) of March 2003[5] indicates those responsible for reprisals against the civilian population. Thus, during the week of 15-21 March 2003 a battalion commander was found dead on the outskirts of the Muhawazi and Nyaruganda areas. The soldiers are reported to have taken reprisals against the population, systematically looting and burning their homes. The hill settlements of Nyakiyonga, Nykibingo, Rutoke, Ngara, Bwome and Mugongo were also allegedly attacked, looted and destroyed by the soldiers. The people apparently fled towards the Bimpinga commune (Rutana province). On 19 March three women were reportedly raped by soldiers near Muhwazi. While the soldiers were engaging in the reprisals, the road between Kinyiya and Nyarugande had reportedly been barred and closed to traffic, under pain of imprisonment. Using the death of four of their number in an ambush on 24 March as a pretext, the soldiers are said to have kidnapped all the men of military age from the Batye hill settlement (Bubanza province) and to have systematically destroyed and looted all the homes.

38. The soldiers inferred from the fact that the rebels had not looted the cattle of the inhabitants of the Dutwe hill settlement that the latter were accomplices, and are said to have punished them. The soldiers looted the hill settlement of Vumwe on 23 March and that of Rusengo for three successive days from 23 March.

(b) Violations attributed to rebel groups

39. The mass violence which occurred before 15 March caused an outcry among the population. Rebel chiefs reportedly ordered an immediate end to those practices.

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[4] Drugs found on some of those children suggest that they had been drugged.

[5] UNICEF-BURUNDI, *Field Report*, 24-26 March 2003.

However, it is very difficult to obtain information on sexual violence, which may very well continue to take place without anyone's knowledge.

40. The Special Rapporteur was informed of many cases of abduction, including the case mentioned previously of members of FRODEBU by CNDD-FDD rebels, which aroused national and international indignation. The parliamentarians stated that they had gone to their districts to commemorate the tenth anniversary of their party's victory in the presidential and legislative elections of June 1993. The rebel movement ordered the abductions because, according to them, the parliamentarians had no business in their territory. CNDD-FDD allegedly held them so that they would reveal the true reasons for their presence in the province.

41. The rebels are reportedly continuing to impose taxes on the people. In the town of Ruyigi, rates are said to have reached 10,000 Burundian francs for officials of non-governmental organizations, 5,000 francs for members of the civil service and 1,000 francs for farmers. Even certain military staff feel obligated to pay the taxes to prevent their houses from being looted. Six houses were reportedly looted at Ruyigi because the owners had not paid the taxes.

42. There are numerous reported cattle thefts and looting in Ruyigi province, some in broad daylight near the town.

(c) Acts of violence by persons unknown

43. Many exactions against the civilian population have allegedly been perpetrated by unknown persons, particularly rape, which has recently increased.

3. The proliferation of rape

44. Mass rapes, often gang rapes, perpetrated by members of armed groups and soldiers of the regular army, and also by unknown persons or deserters from both types of forces, have recently increased considerably. They have spread in the conflict zones, in the east in particular, as well as in and around Bujumbura. The victims are mainly women without regard for age, but also young boys, a new phenomenon.

45. During her visit, the Special Rapporteur was informed of a situation of particular concern: humanitarian workers had not been able to reach women for six to eight weeks in Ruyigi province, where mass rapes had been committed by the two belligerent parties. She was also informed of the case of the women of Kamenge who were reportedly subjected to sexual violence by unknown persons.

46. During a meeting organized by the OHCHR Burundi office at Bujumbura on 27 March 2003, women who had been victims of sexual violence gave harrowing accounts of what they experienced at Ruyigi. The record of this meeting states that several hill settlements faced a deplorable humanitarian situation because they were regularly visited by groups of armed men. The clashes between the rebels and the army do not spare the people, who are frequently forced to flee and spend the night outside their houses to avoid rape and murder.

47. The participants in this meeting noted a number of things, including the lack of protection provided for women by their husbands (who usually run away from the attackers) and by the authorities, and the trauma suffered by adolescents and young children after witnessing the rape of their mothers (when they are not victims

themselves). In the case of gang rapes, children are often abused in front of other members of the family, in particular the mother and the brothers and sisters. One woman gave an account of being subjected to several acts of sexual violence in succession while holding her baby on her shoulder. Women keep silent about what they have suffered or seen because they fear abandonment by their partners (which is very likely) or social shame. Silence is also a means of protecting themselves and their children against possible reprisals from the aggressors. Rapes, often repeated, can be followed by murder.

48. This violence contributes to the spread of HIV/AIDS and the increase in unwanted pregnancies. It is at the root of enormous psychological damage, especially in young victims, as is often the case in recent times. In many cases, it leads to the disintegration of the family after the departure of the husband or of children who have wearied of quarrelling between the parents. Because the victims fear reprisals, and also because of cultural reticence and lack of confidence in the justice system, responsibility in rape cases is difficult to establish, which makes solving such cases considerably more complicated. Given the level it has reached recently, sexual violence has taken on the character of a war crime and should be treated as such. The perpetrators, particularly belligerents, must learn that this must stop and that in no case will they enjoy impunity.

49. The victims of this violence should receive special care from all sides — the Government, human rights organizations and United Nations agencies. An urgent response to all the issues raised by these crimes must be forthcoming, especially care for the victims, protection of vulnerable groups, and prevention.

4. Violations of freedom of movement and freedom to choose one's residence

50. The Burundi conflict is causing constant mass displacements of the civilian population fleeing combat zones, as well as alternating movements of Burundian refugees departing from or returning to neighbouring countries, mainly the United Republic of Tanzania and the Democratic Republic of the Congo.

(a) Situation of displaced persons

51. The number of displaced persons within the country remains very high, exceeding 380,000 persons spread among 226 sites.[6] The fighting between the rebels since the end of August in several provinces, in particular Bujumbura-Rural and Bubanza, has led to major displacements of the civilian population. The fighting caused true panic among the people; in Bujumbura-Rural, for example, 3,500 people moved towards the capital and within the province seeking shelter.

(b) Situation of returnees and *sinistrés* (survivors)

52. There are over 800,000 Burundian refugees outside the country, most of them in the United Republic of Tanzania, within or outside the camps. Return movements continue, even if the number of persons involved is still not very high. The total figures for voluntary and assisted returns in all provinces of the country were 19,589 people on 19 May, 41,657 on 20 July and 55,574 on 4 September 2003.[7] From the

[6] Office for the Coordination of Humanitarian Affairs, *Briefing Kit and Directory — Burundi 2003*.

[7] Figures provided by UNHCR (Burundi office).

beginning of 2003 up to 17 August, 32,686 Burundians have returned voluntarily, mainly from the United Republic of Tanzania, the Democratic Republic of the Congo, Rwanda and Zambia.

53. Reception of returnees is supported by the Office of the United Nations High Commissioner for Refugees (UNHCR). In addition to the Muyinga and Makamba sites, it opened a third site at Cankuzo at the beginning of June for returnees coming from the United Republic of Tanzania. Another site is planned at Ruyigi.

54. Reception and settlement of returnees are still not easy. *Sinistrés* (survivors of the conflict) have suffered many violations of their rights in the camps and also on the way home. Some of them, especially those who left Burundi after 1972, face land issues, particularly in the south and southwest. Difficulties of all types, but also security issues, force some returnees into exile again. A rapid revision and implementation of the Land Code, as planned, will certainly help to reassure the Burundian people, whether or not they have returned, and will promote national reconciliation.

55. The National Commission for the Rehabilitation of *Sinistrés* (Survivors) has been established, in implementation of the Arusha Agreement, by an act of 13 December 2002 and a decree of 18 February 2003. It is composed of 28 permanent members and divided into subcommissions for the following areas: repatriation and return of refugees; land and other property; management and coordination of humanitarian aid; resettlement of survivors and the socio-communal infrastructure; and administration and finance. The Bureau of the Commission, whom the Special Rapporteur met on her latest visit, plans to elaborate a definitive plan of action in order to offer real assistance to survivors and defend their interests with the State. The Commission lacks the means to fulfil its mission effectively. Furthermore, there is no clear distinction between its role and that of the Ministry for the Rehabilitation and Reintegration of Returnees. This could create jurisdictional conflicts between the two bodies which would be detrimental to the interests of returnees and survivors.

5. Violations of freedom of opinion and expression

56. In these areas, some progress can be noted, but also many failures. Former President Bagaza and the members of his party (Parti pour le redressement national (PARENA)) have been released, and the ban imposed on the party's activities lifted. However, neither President Bagaza nor the members of his party were allowed to leave Burundi but were granted provisional release pending trial. On 16 June 2003, the judicial chamber of the Supreme Court ordered the release of Christophe Hicintuka, the last member of PARENA still in pre-trial detention, charged with attempting to destabilize the institutions of the Republic in 2002. The opening arguments on the substance of the case are scheduled for 26 September 2003. Idelphonse Ndayigimana (see E/CN.4/2003/45, para. 51), was also released.

57. Six members of the group advocating the Framework Agreement for the Restoration of a State of Law, and opposed to the Arusha Agreement, were apprehended on 28 May 2003 and held in Mpimba prison. According to their attorney, they are being held without an arrest warrant. Diomède Rutamucero, president of the Puissance d'autodéfense-Amasekanya, had been in Mpimba prison since 22 May 2003. All these leaders were granted provisional release a few days later.

58. The problems encountered by representatives of the media are many, including difficulties of access to information, censorship and intimidation. In March 2003, the head of State, Pierre Buyoya, prohibited the broadcasting of messages from the armed groups CNDD-FDD and PALIPEHUTU-FNL. This decision followed the decision already taken by the Government in May 2002, but there are no written directives to this effect. The suspension of two radio stations (Isanganiro and Radio publique africaine) in September 2003 is a similar case, as it followed the broadcast of a speech by the FNL spokesman. However, the suspension was lifted after five days because of the outcry it raised in Burundian society.

6. Situation of the Batwa minority

59. The Batwa represent at least 2 per cent of the population of Burundi. There are some 10,000 of them in Gitega. The problems encountered by the Batwa are linked to poverty and exclusion, but they also have cultural roots. War and economic difficulties accentuate the community's backwardness. Their children do not go to school because of a lack of means but also for fear of being rejected by the others. When they do go to school they usually do not complete the first year, since the school is far from where they live and they do not have the means to spend on accommodation or food while being educated. Cultural atavism explains why they have difficulty finding tutors to come to their aid. Today the Batwa manifest an extraordinary degree of backwardness in the school attendance levels of their children, especially girls.

60. The Batwa also do not have access to health care and adequate food. In point of fact, they generally do not possess land, and when they do the land is the least fertile. It also happens that because of inexperience or poverty they sell the land which has been allocated to them. They have hardly any relations with the other communities. Inter-ethnic marriages are so rare that when she visited Gitega the Special Rapporteur was actually informed about the celebration of a marriage between a Batwa man and a Hutu woman.

61. The Batwa often fall foul of the law. They are frequently accused of theft. Large numbers of them do not possess identity cards. They suffer the throes of war as much as the other communities if not more so because of their isolation. However, according to the testimony of some of them, they seem not to enjoy the same degree of assistance from the Burundian authorities or the same international humanitarian assistance. Certainly, action is being taken by non-governmental organizations and United Nations agencies to help them to look after themselves and live alongside the other Burundian communities, but it has not yet had any significant effect.

7. Women's rights

62. The rigours of war, economic difficulties and traditional sluggishness make progress in this area virtually unachievable. However, the status of women is such that it is no longer possible to use war as an explanation for violations of women's rights or as justifying the timidity of a policy to promote their rights. Inertia or indifference in the face of their suffering can no longer be accepted; in fact, that suffering must be the spur for putting into effect compensatory measures.

63. The Special Rapporteur has been informed that the bill on matrimonial dispositions, successions and regimes will be presented to the Council of Ministers

in the third quarter of 2003. But it has to be said that this text has been expected for so long that the fear is that it will prove to be a disappointment. According to people the Special Rapporteur met, particularly members of the Gitega women's associations, the law, even if it is passed, must be explained to everyone, otherwise it might be badly received, even by the women whose rights it is intended to protect.

64. Despite the progress achieved since the beginning of the political transition, women are still underrepresented in the political parties and poorly represented in executive bodies, and their participation in decision-making is still small. The provisions of the Arusha Agreement concerning the appointment of women to decision-making posts (30 per cent) are not respected. Some of the women met pointed out that only 6 of the 28 members of the National Commission for the Rehabilitation of *Sinistrés* (Survivors) are women.

65. Women feel themselves to be wronged by the justice system. The majority of them, particularly in rural areas, do not have the means to seek the advice of a lawyer if they have to deal with the justice system. They claim that this lack of means is also prejudicial to them in the event of a trial because they cannot "pay off the judge".[8] They also claim that they do not have the means to travel to lodge a complaint and they propose that the process at the hill-settlement level be facilitated.

66. Discrimination against women is more evident in rural areas than in the towns. War and disease have increased the number of widows and made their situation more precarious. In the same way as when they have to claim their rights under the law, they find themselves powerless when faced with life's travails, with health problems (especially HIV/AIDS), with schooling for their children or quite simply with the daily task of finding enough food to feed their children.

67. Moreover, women, who are disadvantaged through lack of material means but also because of ignorance of their rights, often have to deal on their own with problems caused by sexual violence suffered either by themselves or by their daughters. In rural areas, the traditional obstacles weigh very heavily on respect for women's rights.

68. In Burundi there are not always prisons for women, apart from the one at Ngozi. Elsewhere they are incarcerated in various buildings or premises separated from those of men, but in all cases they share the same prison environment as men. They engage in no physical activity and prolonged detention makes their social reintegration very difficult.

8. Children's rights

69. Children are one of the groups most affected by the continuing conflict and the growing poverty that results from it. Violations affect children who are the victims of war, street children, child soldiers,[9] minors in prison and children who are AIDS orphans.

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[8] Some of the women the Special Rapporteur met in Gitega suggested that they would lose their cases or find themselves in prison because they did not have the means to secure the assistance of a lawyer or to bend the court verdict.

[9] There are estimated to be several thousand of them in Burundi recruited by all parties to the conflict.

70. The lack of a genuine ceasefire, continuing clashes, economic difficulties and the disintegration of the social fabric explain the fact that no real improvement in the situation of children's rights in Burundi has been recorded in the period concerned. In fact, their fundamental civil, political, economic, social and cultural rights continue to be violated on a regular basis. They are the victims of numerous acts of violence by the regular security forces and by armed rebel groups.

71. During the attack on Bujumbura in July and the repression that followed it, inexperienced children appear to have been used as soldiers, placed in front of weapons without being armed and even executed and murdered in a deliberate and arbitrary manner. Children are said to have been incarcerated and held in secret in military camps, where they were subjected to torture and other cruel treatment. Young people suspected of being collaborators with the military or policemen could not expect to be treated any better when they fell into rebel hands.

72. The demobilization of child soldiers is taking a long time in spite of the agreement signed between UNICEF and the Burundian Government and financed by the World Bank. The Special Rapporteur met detained minors, former policemen, who were incarcerated for theft, rape and/or murder, all of whom stated that they had had weapons in their hands after only a few days of training by regular soldiers.

73. Even if they are relatively few in number compared with other detainees, children in detention (167 out of a total of 8,000 detainees[10]) are particularly exposed to violations of their rights because of the inadequacies of the prison system, deficiencies in the legal system and also their own ignorance of the laws covering them. Thus, they do not escape any of the acts of violence suffered by adult detainees. The number of arbitrary arrests and detentions concerning minors is still as high. A very large number of complaints regarding theft are lodged against minors by some of their employers. The minors are often arrested and can remain in prison without trial for many years. Many minors have been sentenced to very heavy terms of between 10 and 20 years without having had the assistance of a lawyer during their trial. Furthermore, since most of the children come from disadvantaged social groups, few of them are able to afford care when they fall ill.

74. Penal sentences of 15 to 20 years are frequently handed down on minors for offences of varying degrees of seriousness, although the Code of Criminal Procedure prescribes the attenuating circumstance of minority in respect of accused children aged from 13 to 18 years. These children are supposed to serve half the sentence incurred by adults, but in many cases this provision has not been applied. This situation is possibly due to the fact that judges have insufficient, if any, specialization in that field, and it could be corrected by establishing special jurisdictions for minors. The Special Rapporteur met minors in Mpimba prison who had been waiting for several months to see the judge. Children are often arrested without the procedures governing arrest and detention being respected.

[10] Situation as of 28 February 2003 (figure given by the prison administration). Most of these children are in prison for minor offences.

75. Some minors are tortured, while others are kept in detention for several years without being charged or tried, and in inhumane and degrading conditions.[11] Several of them having lost contact with their families, from whom they do not receive visits, have to survive on the daily ration handed out to detainees (350 grams of manioc flour and haricot beans), when they are not robbed of it by the adult detainees. Their youth and promiscuity with the adult detainees expose them to all kinds of violence, and some are even said to have been subjected to sexual abuse.

B. Economic, social and cultural rights

76. The Special Rapporteur has not noted any improvement in the situation of economic, social and cultural rights in the period concerned.

77. In the province of Ruyigi, for example, education is in crisis. The majority of schools are closed and the drop-out rate is very high. The schools are occupied by the military. The number of destitute children attending regularly is very low. Owing to the persistent insecurity, absenteeism is also growing among the teachers, who do not hesitate to take strike action to defend their rights.

78. Access to health care is still limited by the obstacles mentioned in previous reports. In some provinces, especially those in conflict, access to the right to food is just as limited. The education and health systems have been penalized because the financial resources came simply from the provinces themselves.

79. Large numbers of Burundians still cannot enjoy access to care, because of a lack of funds but also because of the increasing insecurity. Furthermore, cases of the virtual seclusion in hospitals of patients who have not been able to meet the costs of the care received are still very widespread and concern the majority of the public hospitals.

80. The prevalence of HIV/AIDS is still high. The numerous cases of violence against women, the precariousness of living conditions and ignorance contribute to the spread of the pandemic. In addition to the difficulties of gaining access to care, persons suffering from AIDS are subjected to discrimination of various kinds at the social and occupational levels. The Burundian Government, through the Ministry responsible for combating HIV/AIDS and the associations for the defence of the rights of persons living with HIV/AIDS, has planned a series of measures to combat this discrimination. A bill on the promotion and protection of persons living with HIV/AIDS is at the discussion stage. The Government has also taken measures to abolish the tax on the medicines, but the number of sufferers receiving anti-retroviral treatment is still too few.

[11] An Amnesty International report entitled "Poverty, isolation and ill-treatment: Juvenile justice in Burundi" (September 2002) gives a good account of the situation of children in conflict with justice. The report also describes the situation of children in the Burundian conflict, displaced and refugee children, child soldiers and the sexual violence of which children in general are victims.

C. Justice and the rule of law

1. Administration of justice and the rule of law

81. With regard to the administration of justice, the Special Rapporteur was informed about the adoption of the law on genocide and the law on the Truth and Reconciliation Committee. Nevertheless, there are still cases of detention in military camps. There are also instances of people being detained beyond the time limits established under the Code of Criminal Procedure. Many remand prisoners are reported to have spent several years in detention, sometimes up to nine years, without sentence. The independent commission on issues relating to prisoners[12] has not managed to reduce the number of prisoners held in detention centres, as was expected, while the Arusha Agreement Implementation Monitoring Committee and the Commission on Human Rights, at its fifty-ninth session, reiterated their appeals for follow-up on the report of the independent commission.

82. Impunity persists, especially with respect to acts of violence committed by elements of the regular armed forces and armed rebel groups. Thus, responsibility for the Itaba incident, in which more than 170 civilians were killed by the regular army, in September 2002, and other similar incidents has not yet been determined.

83. With regard to the Itaba case, soldiers were arrested, tried and sentenced to four months in prison by a military tribunal, and then freed. In response to the Special Rapporteur's questions on that case at the fifty-ninth session of the Commission on Human Rights, the representative of the Burundian Government said that the Office of the Principal State Prosecutor of the Republic had appealed the sentence originally handed down. During her mission to Burundi, the Special Rapporteur found that neither the Principal State Prosecutor of the Republic nor the Chief Military Prosecutor, with sole jurisdiction to lodge appeals, had done so. The judiciary authorities, however, affirmed their willingness to continue the inquiry.

84. Widespread incidents of rape by both parties to the conflict remain unpunished. The people of Rohe, who endured exactions by soldiers stationed near their homes, registered a complaint with the Minister of Defence and the Chief Military Prosecutor. They joined the prosecution as civil plaintiffs against the accused soldiers. This is a new development that shows an awareness of, and willingness to overcome, with the assistance of the justice system, the fear instilled by the soldiers.

85. The observers of the OHCHR Burundi office continued to visit the country's three large prisons. They also visited cells of police stations and the gendarmerie in the capital to monitor whether prisoners were being lawfully detained. Those visits led to the release of several illegally imprisoned persons.

86. The Criminal Chamber of Bujumbura organized an ad hoc hearing for the case of the deadly assault on Dr. Kassi Manlan, former World Health Organization representative in Burundi. That case, which dates back more than a year, was postponed until July 2003 to enable the bereaved family's lawyers to appear in court for the civil proceedings.

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[12] In February 2002, the commission provided for in the Arusha Agreement published its report, following which a national commission was established by the Council of Ministers in June 2002 to implement its recommendations.

2. Places of detention

(a) Prisons

87. On 28 February 2003, the prison population numbered some 8,181, against a holding capacity of 3,750 prisoners. The population included 4,469 remand prisoners, 3,468 convicted prisoners, 167 minors, 168 women and 514 soldiers. Added to this prison population were 42 newborn babies living with their imprisoned mothers. Four hundred forty-three prisoners have been given the death penalty and 651 have been sentenced for life. Between the start of 2002 and April 2003, out of the 2,236 requests for release on parole, 654 were granted.[13] On 15 March 2003, Burundi's prisons held 7,932 prisoners, of whom 4,539 were on remand and 3,393 convicted.

88. Prison overcrowding remains one of the great problems facing the prison administration. To resolve it, the Burundian authorities can apply several solutions, including increasing the (still insufficient) number of releases on parole, accelerating the judicial process and decentralizing jurisdictions (transfer of the cases of the three criminal chambers to the 17 provincial courts). This last measure would mark some progress, but could raise the problem of transporting prisoners if there were no prison in the province in question. The establishment of a master list that would enable the identification of various categories of prisoners and the reasons for the high number of prolonged detentions is also planned.

(b) Other places of detention

89. Most prison cells visited between February and May 2003 were at variance with the Code of Criminal Procedure and showed appalling hygienic conditions.

90. Moreover, access to the military camp of Bujumbura was barred to observers from the OHCHR Burundi office, which was investigating the case of a person who had been detained for illegal possession of a firearm and incarcerated since February after having been held by a gendarmerie brigade. That attitude of the Burundian authorities is regrettable and contradicts the cooperation framework agreement between the Government of Burundi and OHCHR of 8 November 1995. Under the agreement, the OHCHR Burundi office enjoys complete freedom of movement throughout the country, including the freedom to conduct investigations and to access all places of detention.

D. Promotion of human rights

91. The OHCHR Burundi office has increased the number of human rights training sessions. It plans to extend its human rights training and awareness activities to women leaders and to members of the regular armed forces and demobilized rebel forces. The same training will be given to members of the newly reconstituted security forces as well as to returnees and *sinistrés* (survivors). It also intends to contribute to strengthening the pan-African force by providing it with training in human rights and international humanitarian law. A day-long seminar on the role of the media in combating torture was organized for journalists and police representatives to celebrate the United Nations International Day in Support of

[13] Statistics supplied by the Burundian prison administration.

Victims of Torture. OHCHR helped to organize a training workshop on the protection of displaced women. Political authorities and the African community appealed to the Office for support of the peace process. OHCHR is cooperating with the Office of the United Nations High Commissioner for Refugees (UNHCR) to prepare for the return of refugees and to train civil society and the police in refugees' rights. A cooperation agreement was signed between the OHCHR Burundi office and UNHCR.

92. The Government Commission on Human Rights was restructured and now has 16 members. It has resumed its visits in the field with financial assistance from UNDP, which is also funding a study on the role of local human rights committees. The Commission's 2002 report, announced during the visit of the Special Rapporteur, has yet to be published. The Commission complains of insufficient resources, particularly the lack of a permanent staff. Its members say that they are constrained by the absence of budgetary independence and insufficient logistical means.

IV. Observations

93. The absence of a ceasefire and the continued clashes are obstacles to pursuing the peace and national reconciliation process. The delay in deployment of the African peacekeeping force has been inimical to that process. A ceasefire and cessation of hostilities must be quickly established, first of all because the complete implementation of the peace agreements depend on them, and also so that war can no longer be used to justify gross human rights violations. Indeed, it is difficult, in this time of war and insecurity, to envisage the implementation of provisions for an electoral process and therefore think about a post-transition period.

94. Improvement in the human rights situation in Burundi is closely linked to the creation of a climate of stability and lasting peace in the Great Lakes region. The establishment of a Transitional Government in the Democratic Republic of the Congo in June 2003 and the holding of democratic elections in Rwanda are encouraging developments for the future of the region. The positive outcome of the peace process in Burundi opens new prospects for the development of all the countries of the Great Lakes region in particular, and Central Africa in general. The international conference on peace, security and stability in the Great Lakes region advocated by the Security Council and the Secretary-General is an initiative towards that end. It comprises several stages, including a preparatory period that should lead to the holding of the first summit of heads of State and Government in June 2004. Carrying out this process should help to build on the gains made in the area of peace and security and stimulate development of the region and subregion.

95. During her stay, the Special Rapporteur was informed of the continued difficulties in gaining access to *sinistrés* (survivors) and human rights violations, tied not only to the lack of security but also to the obstacles placed by Burundian authorities themselves. The *sinistrés* (survivors) are assisted by the technical group on follow-up, which ensures coordination of humanitarian activities and protection of displaced persons. It enables broad participation of the actors involved with displaced persons, including United Nations specialized agencies, government bodies and humanitarian non-governmental organizations.

96. However, incidents such as those in Kabezi[14] point to the need to establish a structure responsible for the protection of *sinistrés* (survivors). This could involve a thematic group on human rights within the country team, which would effectively contribute to coordinating human rights activities. That group could subsequently be expanded to include non-governmental organizations and the Government Commission on Human Rights.

97. Sexual violence has increased significantly and raised concerns at home and abroad. The magnitude of the crime gives reason to believe that rape is being used as a weapon of war. In its resolution 2003/16 of 17 April 2003, on the human rights situation in Burundi, the Commission on Human Rights highlights the particular nature of acts of sexual violence in that country. However, despite frequent public protests against the rise in such violence, no measure has been taken to end it.

98. The present security situation is exacerbating the increasing seroprevalence rate of HIV/AIDS. It would be good to integrate the HIV/AIDS prevention perspective into human rights awareness and promotion programmes, particularly programmes concerning the billeting of defence and security forces.

99. The problem of determining the age of minors in trouble with the law, already mentioned in earlier reports, still exists. Such detainees have no civil status documents and the age they declare is always different from that mentioned in the criminal file by the officer of the judicial police. Furthermore, the Code of the Individual and the Family establishes 21 as the age of civil majority, whereas articles 12 to 19 of the Code of Criminal Procedure state that the age of majority for criminal purposes is 13 years. In the course of visits to places of detention, the OHCHR Burundi office observers have on several occasions identified detainees under the age of 13. Lastly, none of the 11 prisons in Burundi has accommodation reserved for minor detainees, and overcrowding in detention centres is conducive to the sexual abuse of minors by adult detainees.

100. In order to develop the capacities of the Burundian people with regard to human rights, it would be advisable to consider the establishment of a national human rights commission, even if that seems somewhat premature, given the current situation in Burundi. For the time being, the international community could support the Government Commission on Human Rights so as to enable it to perform its functions.

V. Recommendations

101. **The Special Rapporteur reiterates the recommendations set out in her earlier reports which have not been followed and makes further recommendations to the parties to the conflict, the Burundian authorities and the international community.**

[14] Clashes between the army and the rebels broke out in Kabezi around 21 May in which between 17 to 49 civilians were reported killed.

A. To the parties to the conflict

102. **The Special Rapporteur urges all the belligerents to discontinue all hostilities, lay down their arms and sit down at the negotiating table, for war has never been an effective and durable means of settling disputes among human beings, and is even less effective in the case of disputes between nationals of the same country. She reminds them that the future of Burundi and the survival of its population, especially its young people, call for a negotiated solution as a matter of urgency.**

103. **She appreciates all the efforts made by some belligerents to promote peace but urges them to implement the agreements they have signed and to respect the commitments entered into at the negotiating table.**

104. **The Special Rapporteur urgently appeals to all the belligerents to respect the rights of the civilian population, and especially the right to life, security and inviolability of the person. It is essential that the totally unacceptable sexual violence committed by the belligerents should cease immediately, since it involves war crimes whose perpetrators will sooner or later be held accountable for them.**

105. **The Special Rapporteur exhorts the belligerents to respect international humanitarian law and requests that they refrain from attacking economic and social infrastructures.**

106. **She implores them not to recruit children as soldiers or auxiliaries, and not to involve them in armed conflict in any way. She also urges them to not involve civilians in the armed conflict.**

B. To the Burundian authorities

107. **The Special Rapporteur recommends that the Government should take all appropriate steps to combat impunity effectively and put an end to arbitrary detention and torture. She requests the Burundian authorities to adopt all measures necessary to establish responsibility for grave and massive violations of human rights committed against the civilian population.**

108. **She urges the Government to implement the recommendations of the independent commission on issues relating to prisoners, in particular by making the work of the national commission on this issue more effective and visible.**

109. **The Special Rapporteur recommends that the Burundian authorities put into practice the measures they have taken to stop the recruitment of children into the army and to demobilize those already enrolled.**

110. **She reiterates her recommendation that the Government should demobilize and disarm the militias and other civilian self-defence forces and entrust full responsibility for protection of the public to military and police forces properly constituted using regular recruitment procedures, following a clear chain of command and provisions whereby those committing abuses will be held to account.**

111. The Batwa, given their current situation, should be considered as *sinistrés* (survivors). The Special Rapporteur invites the Government, in accordance with the Arusha Agreement, to take steps to combat the discrimination of which they are the victims.

112. She calls upon the Government to take all necessary steps to protect vulnerable populations and to combat all exactions against children, including minors held in detention.

113. The Special Rapporteur requests the Government to take all necessary steps to put an end to sexual violence, punish the perpetrators and ensure that the victims receive moral, material and psychological support.

114. She invites the Burundian authorities rigorously to respect all conventions on human rights and international humanitarian law to which Burundi is a party.

115. The Special Rapporteur encourages the Burundian authorities to take steps to enhance the efficiency of the Government Commission on Human Rights and to envisage the establishment, within a reasonable time, of a national human rights commission.

C. To the international community

116. The Special Rapporteur thanks the international community, particularly the Regional Initiative States, the Security Council, the African Union and the Secretary-General, for the already substantial efforts it is making to ensure the proper implementation of the peace process. She encourages it to make every effort to persuade CNDD-FDD and PALIPEHUTU-FNL to return to the negotiating table.

117. She encourages the international community to increase its support for the proper implementation of the transition timetable, especially as regards the reform of the army, the quartering of troops and the demobilization and reintegration of combatants, including members of militias and child soldiers. This reform programme should place great emphasis on human rights training.

118. She requests the international community to persuade the belligerents to include a human rights component in the negotiations and in the conclusion of ceasefire agreements between the Government and the armed groups.

119. The Special Rapporteur requests the international community to increase its support for regional mediation and the African Union, in particular as regards the deployment of African peacekeeping forces.

120. She supports the steps taken to prepare for the international conference on peace, security and stability in the Great Lakes region. She also supports continuation of that process and calls upon the international community and regional and subregional organizations to support it, for its success will undeniably have a positive impact on the human rights situation in Burundi and Central Africa.

121. The Special Rapporteur hopes that the international community as a whole will encourage the countries of the subregion to sign bilateral security

agreements among themselves so as to increase the chances of a durable peace and reduce the causes of conflict and massive violations of human rights.

122. **She invites the international community to provide greater assistance to the judicial system and the new institutions established, such as the Truth and Reconciliation Commission and the National Commission for the Rehabilitation of *Sinistrés* (Survivors).**

123. **The Special Rapporteur requests the international community to encourage those involved in humanitarian action to devise projects targeted at the Batwa and to support the action undertaken by the Burundian authorities in that regard.**

124. **She appeals to donors to continue supporting humanitarian and development assistance and to do all they can to fulfil rapidly the commitments they assumed at the Paris and Geneva conferences, especially those concerning the campaign HIV/AIDS, priority development programmes and human rights.**

125. **In order to improve the protection and promotion of human rights, in particular the status of women and the protection of their rights, she requests the international community to encourage the various actors — Governments, United Nations agencies, civil society and non-governmental organizations — to develop a system for coordinating their activities in these fields.**

126. **Since human rights issues lie at the core of the conflict, the Special Rapporteur emphasizes the necessity and urgency of increasing the financial and human resources currently available to the OHCHR Burundi office, so that it can take more action in the field and respond effectively to the many requests it receives relating to the observation, protection and promotion of human rights and human rights training.**

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Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 for the biennium 2004-2005

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the proposed requirements for the biennium 2004-2005 of the International Criminal Tribunal for the Former Yugoslavia (A/58/226). The Committee also took note of the report of the Secretary-General on the progress made by the Tribunal in reforming its legal aid system (A/58/288). During its consideration of the reports, the Committee met with the Prosecutor, Deputy Prosecutor and the Registrar of the Tribunal and with representatives of the Secretary-General, who provided additional information.

2. The Advisory Committee has also considered the report of the Secretary-General on the supplementary estimates arising in respect of Security Council resolution 1503 (2003) on the establishment of a Prosecutor of the International Criminal Tribunal for Rwanda (A/58/368). The Committee's comments and recommendations on those estimates, which also have an impact on the budget of the Tribunal for the Former Yugoslavia (see paras. 16, 19 and 25 below), are contained in its report on the proposed budget for the Rwanda Tribunal.

3. As indicated in the introduction to the proposed budget (A/58/226, paras. 3-4), the President of the International Criminal Tribunal for the Former Yugoslavia, in April 2002, presented a report on the judicial status of the Tribunal and the

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prospects for referring certain cases to national courts. The report contained a completion strategy, which provided for setting 31 December 2008 as the date for completion of first-instance trials and 31 December 2010 as the date for completion of appeals. The report of the President of the Tribunal was endorsed by the Security Council on 23 July 2002 (S/PRST/2002/21).

4. The Advisory Committee observes that the completion strategy of the Tribunal comprises two main pillars, namely: (a) the fair and expeditious completion of trials by the Tribunal in accordance with the time line set for the completion strategy; and (b) the transfer of cases against accused persons detained under the authority of the Tribunal to national courts of Bosnia and Herzegovina.

5. The Secretary-General indicates in the proposed budget that in support of the first pillar, the Tribunal will continue to undertake six concurrent trials through the use of 16 permanent and 9 ad litem judges and to complete all related appeals in the most expeditious manner (A/58/226, para. 6). The Advisory Committee notes that the Office of the Prosecutor will strive to meet the goal of bringing all priority investigations to the indictment stage by the end of 2004 and that, as investigations are completed, a gradual reduction in posts will be effected in 2005 within the Investigations Division, resulting in the abolition of 43 posts and the redeployment of 18 posts to other priority areas of the Tribunal (see ibid., para. 8).

6. As far as the second pillar is concerned, the Secretary-General indicates that a transition team will be established within the Office of the Prosecutor to oversee: (a) the preparation of the transfer of cases from the Tribunal to the State court in Bosnia and Herzegovina in support of the completion strategy; and (b) the preparation of dossiers for all other lower-level war crime perpetrators identified during investigations, with a view to transferring those dossiers to the appropriate prosecuting authorities in the countries of the former Yugoslavia (ibid., para. 10). The Advisory Committee was informed that 17 cases involving 62 suspects were currently being considered for transfer to national courts, as follows: 12 cases (48 suspects) to the courts of Bosnia and Herzegovina; 3 cases (8 suspects) to the courts of Croatia; and 2 cases (6 suspects) to the courts of Serbia and Montenegro. The Committee was provided, upon request, with additional information on the role of the transition team for courts in Croatia and in Serbia and Montenegro, which is contained in annex I below.

7. The Advisory Committee was provided with information and statistics, as at September 2003, on activities carried out from 1996 to 2003:

(a) 38 individuals have been convicted by trial chambers;

(b) 1 individual has been acquitted in the first instance and 4 have been acquitted by the Appeals Chamber;

(c) 18 convictions have been sustained by the Appeals Chamber;

(d) 18 cases involving 29 accused persons have reached the pre-trial stage;

(e) 3 trials involving 4 accused persons are ongoing, 4 persons involved in 2 cases are awaiting judgement by the trial chamber, and 6 accused persons who have pleaded guilty are awaiting sentencing;

(f) 7 cases involving 12 accused persons are at the appeals stage, and 8 interlocutory appeals are pending;

(g) Arrest warrants have been publicly issued for 16 accused, who are still at large;

(h) 15 accused persons have pleaded guilty.

II. Proposed budget for the biennium 2004-2005

8. **The Advisory Committee notes with satisfaction that the proposed budget of the Tribunal for the biennium 2004-2005 has for the first time been presented in a results-based format, as requested by the General Assembly in its resolution 57/288 of 20 December 2002. In the opinion of the Committee, the presentation represents an improvement in the state of results-based budgeting.**

9. The resource requirements proposed for the Tribunal for the biennium 2004-2005 under assessed contributions are estimated at $262,283,100 gross ($234,808,500 net), before recosting (see ibid., table 2). This represents a decrease of $370,600 gross, ($992,500 net) compared with the appropriation for the biennium 2002-2003. The Committee points out that those estimates include a provision of $4,518,100 representing the delayed impact of the establishment of 90 posts for the Tribunal during the biennium 2002-2003. After recosting, estimated at $67,333,000 gross ($63,878,500 net), the proposed resource requirements for 2004-2005 amount to $329,616,100 gross ($298,687,000 net). However, the decision of the Security Council to establish the new position of Prosecutor of the International Criminal Tribunal for Rwanda (resolution 1503 (2003)) entails a decrease in the estimated resource requirements for the International Criminal Tribunal for the Former Yugoslavia in the amount of $2,293,100 gross ($1,915,200 net), thus reducing overall requirements to $327,323,000 gross ($296,771,800 net) for the biennium 2004-2005 (see A/58/368, para. 12).

10. Since the estimates before recosting represent a decrease as compared with the revised appropriation for the biennium 2002-2003, the increase of nearly 25 per cent in resource requirements, even after the reduction attributable to the creation of the post of Prosecutor for the International Criminal Tribunal for Rwanda is attributable to recosting. The largest components of the recosting are the impact of the projected fluctuations in the exchange rate ($45,567,900) and inflation ($12,151,700) (see A/58/226, para. 19). Moreover, the recosting includes a provision of $5,899,200 reflecting adjustments to standard salary costs. Annex II below, submitted by the Secretariat, contains budgetary assumptions used in formulating the proposed budget for the International Criminal Tribunal for the Former Yugoslavia. As shown therein, the budget estimates were calculated on the basis of a projected exchange rate of €0.89 to US$ 1.

11. **The Advisory Committee points out that the value of the United States dollar to major world currencies has been volatile during the past 12 months. The Committee reiterates its view on the issue of recosting resulting from currency fluctuations.**[1]

12. Total extrabudgetary resources for the biennium 2004-2005 are estimated at $7,252,200, reflecting a decrease of 42.2 per cent, as compared with voluntary contributions of $12,555,100 for 2002-2003 (ibid., table 2). The Advisory Committee was informed upon enquiry that the reduction in extrabudgetary

resources resulted from the anticipated completion by the end of 2003 and 2004 of a number of projects in the areas of exhumations, investigations and prosecution.

13. The proposed staffing table of the Tribunal for the biennium 2004-2005 (see ibid., table 3) provides for 1,018 assessed budget posts (not including 16 permanent and 9 ad litem judges) and 18 extrabudgetary posts, reflecting the abolition of 43 assessed budget posts (34 Professional and 9 General Service), the conversion to temporary status of three posts currently funded from general temporary assistance (2 P-4 and 1 P-3), the upward reclassification of one P-4 and four P-3 posts and a number of internal redeployments (see ibid., para. 18).

14. Moreover, as indicated in the report of the Secretary-General on supplementary estimates arising in respect of Security Council resolution 1503 (2003) (A/58/368, paras. 10-12), the decision of the Council to establish the post of Prosecutor for the International Criminal Tribunal for Rwanda will entail a further reduction of 10 assessed budget posts (8 Professional and 2 General Service) for the International Criminal Tribunal for the Former Yugoslavia, thus bringing the total number of assessed budget posts for the biennium 2004-2005 to 1,008 (469 Professional and 539 General Service).

15. The budget estimates assume a vacancy factor for continuing posts of 6.5 per cent for the Professional and higher categories of staff and 4.0 per cent for the General Service and related categories (see annex II below). The Advisory Committee was provided with vacancy statistics by organizational unit of the Tribunal as at 30 September 2003, which indicated a vacancy rate of 7.8 per cent in the Professional category and 4.6 per cent in the General Service category in the Office of the Prosecutor and 7.5 per cent in the Professional category and 7.0 per cent in the General Service category in the Registry. **Given that it will likely be increasingly difficult to recruit and retain staff as the date for completion of the work of the Tribunal draws nearer, it is unlikely that these vacancy statistics will improve significantly, if at all, even with the reduction in the overall number of posts described in paragraph 13 above.**

A. Chambers

16. The Advisory Committee notes that the budget estimate for the Chambers is not affected by the decision of the Security Council to create the new position of Prosecutor of the International Criminal Tribunal for Rwanda. The resource requirement for the Chambers for 2004-2005 amounts to $9,000,400 gross before recosting, as compared with the appropriation of $8,776,200 gross for the biennium 2002-2003, reflecting resource growth of $224,200, or 2.6 per cent (see A/58/226, table 2). The total provision of $9,000,400 gross includes $8,823,600 for salaries and allowances for 14 permanent and 9 ad litem judges, $30,500 for consultants and experts and $146,300 for travel of the President of the Tribunal and the judges. The salaries and allowances of the judges have been calculated on the basis of the terms and conditions of service as established by the General Assembly in its resolutions 53/214 of 18 December 1998, 55/249 of 12 April 2001 and 56/285 of 27 June 2002. The next comprehensive review of the emoluments, pensions and other conditions of service of the judges is to be undertaken during the fifty-ninth session of the Assembly. The Committee notes that the estimates may need to be adjusted in the light of decisions taken at that time.

17. In the supplementary information provided to the Advisory Committee, requirements for travel are estimated at $146,300, reflecting resource growth of 24.2 per cent. That amount includes a provision of $32,000 to cover the travel and incidental expenses of the judges to a European State in connection with a seminar. Upon request, the Committee was informed that nine judges had spent a total of 58 days on extrajudicial activities during 2002 while on official travel and that eight judges had spent 24 days on official travel as at the end of September 2003. **The Committee recalls its view that the judicial activities at The Hague should have priority over public relations activities and attendance at external meetings (see A/55/642, para. 28); therefore the Committee welcomes the decrease in travel of the judges in 2003.**

18. The Advisory Committee notes that by the end of the biennium 2004-2005, it is expected that the Chambers will have completed 12 trials, 12 pre-trial procedures, 6 pre-appeal procedures, 8 appeals from final trial chamber judgements and all interlocutory appeals arising from the above (see A/58/226, para. 23). The Committee was provided with projected workload indicators for the organs of the Tribunal for the biennium 2004-2005. For the Chambers, the Committee notes that the number of court sessions will increase from the 3,402 estimated for 2002-2003 to 3,956 projected for 2004-2005 (based on the new method for counting sessions introduced as from January 2002, whereby one court day equals four sessions: two in the morning and two in the afternoon).

B. Office of the Prosecutor

19. **The Advisory Committee reiterates the need for close coordination between the two Tribunals and, with the appointment of a separate prosecutor for the International Criminal Tribunal for Rwanda, trusts that steps will be taken to ensure the continuation of this collaboration in all areas of the work of the two Tribunals.**

20. The proposed budget for the Office of the Prosecutor for the biennium 2004-2005 amounts to $79,134,500 gross (before recosting), a decrease of $2,756,200 gross, or 3.4 per cent, compared with the appropriation of $81,890,700 gross for the biennium 2002-2003. Recosting the provisions to 2004-2005 rates would increase them by $20,801,400 to a total of $99,935,900 gross (see ibid., table 2). The decision to create a new position of Prosecutor of the International Criminal Tribunal for Rwanda entails a decrease in the estimated resource requirements for the Office of the Prosecutor in the amount of $2,293,100 gross, thus reducing the assessed budget requirements for the Office to $97,642,800 gross for the biennium 2004-2005 (see A/58/368, table 4).

21. The proposed staffing requirements for the Office of the Prosecutor for 2004-2005 reflect the abolition of 43 posts and the redeployment of 13 posts to the Registry (see A/58/226, para. 39). Moreover, the decision of the Security Council to create a new position of Prosecutor of the International Criminal Tribunal for Rwanda entails a further reduction of 10 posts for the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia for the biennium 2004-2005, thus bringing the total proposed staffing requirements of the Office to 354 posts (215 Professional and 139 General Service).

22. As indicated in the proposed budget, 34 investigator posts (16 P-3 and 18 P-2) would be abolished effective 1 July 2005, and 9 General Service (Other level) administrative posts in the Skopje and Pristina field offices would be abolished effective 1 January 2005 (see ibid., para. 17 (a)). The Advisory Committee notes that while all investigations will be brought to the indictment stage by the end of 2004 (see ibid., para. 8), a reduction in investigator posts will not start before 1 July 2005; no time frame is given for the redeployment from the Investigations Division of 13 posts (2 P-4, 7 P-3, 2 P-2 and 2 General Service (Other level)) to the Registry and 5 posts within the Office of the Prosecutor (1 P-3 and 2 P-2 to the Immediate Office of the Prosecutor and 2 P-4 to the Prosecution Division). The Advisory Committee notes that even after all the abolitions and redeployments, 120 Professional and 36 General Service posts would remain in the Investigations Division. According to the Secretary-General, those posts would be required to support all phases of the prosecution process in addition to providing support for the preparation of cases and dossiers for referral to local jurisdictions, as envisaged in the completion strategy (see ibid., paras. 30-36). **The Committee points out in this connection that the process of determining the number of posts to be abolished, redeployed or retained does not appear to be transparent from either the budget document or the supplementary information provided to the Committee, nor is it supported by a thorough analysis of workload indicators. The Committee requests that the volume of work and the pace of completion of the related activities, especially in the Office of the Prosecutor, be continuously monitored in order to determine whether some of the posts involved could be abolished or released for transfer to other areas of the Tribunal before the second half of 2005. Subject to that request, in order to ensure that the completion strategy is adhered to, the Committee recommends acceptance of the staff capacity proposed for the Office of the Prosecutor.**

23. The Advisory Committee notes from the supplementary information provided to it that the requirements of the Office of the Prosecutor for overtime are estimated at $279,000, reflecting an increase of $89,800, or 47.5 per cent. According to the Secretariat, this increase relates primarily to the additional work required by the trial support staff. **The Committee points out, however, that on the basis of the available documents it was not in a position to ascertain whether any attempt had been made to quantify or justify either the total or the additional resources requested. The same comment of the Committee applies to the Office's requirements for consultants, which are estimated at $387,500, reflecting an increase of $80,800, or 26.3 per cent.** According to the Secretariat, approximately 104 consultants would be required during the biennium for up to 520 days, which would involve related travel costs. **The Committee points out that at the stage when an important element of the Tribunal's functions, such as investigations, is expected to be substantially curtailed during the biennium 2004-2005, any increase in resource requirements for the biennium should have been explained and justified much more thoroughly.**

24. The supplementary information provided to the Advisory Committee indicates travel requirements of $4,717,000 for investigations and prosecutions, which amounts to a decrease of $1,588,100, or 25.2 per cent. According to the Secretariat, a decrease in investigative travel is not expected until the end of 2004. The Committee notes, however, that certain support functions of the Office of the Prosecutor will be affected by the reduction in investigative activities during 2004.

For example, the Skopje and Pristina field offices would be closed at the end of 2004. **The Committee is of the view that the volume of investigative activities will not stop abruptly at the end of 2004 but will decrease gradually throughout the year.** With regard to prosecution-related travel, the Committee notes from the Tribunal's workload indicators that the number of witnesses interviewed is anticipated to decline from 6,300 during the biennium 2002-2003 to 3,000 during the biennium 2004-2005. This should, therefore, reduce the need for travel for the purpose of preparing witnesses to give evidence. **Therefore, the Committee is of the view that further reductions are possible in the requirements proposed for investigative and prosecution-related travel in the Office of the Prosecutor.**

C. Registry

25. The resource requirements for the Registry for the biennium 2004-2005 are estimated at $174,148,200 gross (before recosting), an increase of $2,161,400, or 1.3 per cent, over the 2002-2003 appropriation of $171,986,800 gross (see ibid., table 2). In addition, it is estimated that the Registry will administer extrabudgetary resources amounting to $5,567,700, as compared with $5,736,300 estimated for 2002-2003 (ibid., table 8). The budget estimates for the Registry are not affected by the Security Council's decision to create the new position of Prosecutor of the International Criminal Tribunal for Rwanda.

26. The staffing establishment of the Registry in the proposed assessed budget for 2004-2005 comprises 654 posts (254 Professional, 245 General Service and 155 Security Service), reflecting the inward redeployment of 13 posts from the Investigations Division of the Office of the Prosecutor, the conversion to temporary status of three posts (2 P-4 and 1 P-3) currently funded from general temporary assistance funds and 5 reclassifications (1 P-4 and 4 P-3). The Advisory Committee sought clarification with respect to the information contained in paragraphs 18 (f) and 44 of the budget document and was informed that the two liaison officer posts in Belgrade and Sarajevo would be established, effective July 2005, through the redeployment of 2 P-3 posts from the Office of the Prosecutor.

27. The breakdown by organizational unit of the 13 posts (2 P-4, 7 P-3, 2 P-2 and 2 General Service (Other level)) proposed for redeployment from the Investigations Division of the Office of the Prosecutor to the Registry is as follows:

(a) Redeployment of 2 P-2 posts and 1 General Service (Other level) post to the Victims and Witnesses Section, effective January 2005;

(b) Redeployment, effective January 2005, of 2 P-4 posts and, effective July 2005, of 4 P-3 posts to the Chambers Legal Support Section;

(c) Redeployment of 1 General Service (Other level) post to the Detention Unit, effective January 2005;

(d) Redeployment of 2 P-3 posts to the Registry Advisory Section, effective July 2005;

(e) Redeployment of 1 P-3 post to the Human Resources Section of the Division of Administration, effective July 2005.

The Advisory Committee concurred with the proposed redeployment of 13 posts from the Investigations Division of the Office of the Prosecutor to the Registry (see

also para. 22 above). However, the Committee sought clarification with regard to the redeployment of two P-4 and four P-3 posts to the Chambers Legal Support Section. The Committee was informed that the four P-3 posts were to be subsequently reclassified to the P-4 level. **The Committee finds the proposal for such reclassification to be inconsistent with United Nations budgetary practices. It was informed that the redeployments and subsequent reclassifications would allow all six trial sections in the Chambers Legal Support Section, which are currently managed by a legal officer at the P-3 level, to be headed at the P-4 level. The Committee points out that currently the six trial sections are organizationally structured into three trial chambers headed by a senior legal officer at the P-5 level, and the Committee does not consider that there is a need to introduce yet another layer of hierarchy.**

28. **Moreover, the Advisory Committee points out that the proposed redeployments are to be carried out in July 2005, or six months before the end of the biennium. The Committee is of the view that the proposal to redeploy two P-4 posts to the Chambers Legal Support Section does not constitute evidence in support of the proposal that all six trial sections need to be headed at the P-4 level with effect from July 2005. The Committee requests that the need to reclassify the P-3 posts be reviewed and, if the reclassification is found to be justified, that the request be resubmitted in the context of the proposed budget for the next biennium. At this stage, therefore, the Committee does not recommend the reclassification of the four P-3 posts.**

29. As far as the proposed reclassification of a P-4 post to the P-5 level is concerned, the Advisory Committee notes that the proposal is made in respect of the post of Chef de Cabinet in the Office of the President. Information in support of the proposal is contained in paragraph 17 (b) of the proposed budget. **The Committee recommends approval of the reclassification.**

30. With regard to the proposed conversion of three posts (2 P-4 and 1 P-3) currently funded from general temporary assistance to temporary status for oversight functions, the Advisory Committee notes that the financing of the three posts was approved during the biennium 2002-2003 (see A/58/226, para. 17 (d)). The Administration indicates that the oversight functions would be required on a continuing basis for the duration of the Tribunal's mandate. The proposed budget reflects a corresponding reduction of $452,500 in general temporary assistance due to the proposed conversion. The Committee points out that the proposal for conversion appears to be consistent with its previous observation with regard to the need to consider the issue of providing resources on a continuing basis for audit and investigations under the biennial budget of the Tribunal (see A/56/717, para. 7). **The Committee recommends acceptance of the requested conversion.**

31. The Advisory Committee notes from the supplementary information provided to it that a provision of $302,800 (before recosting) is made under consultants and experts, reflecting an increase of $114,100, or 60.4 per cent. According to the Secretariat, the increase is due in part to the anticipated increase in the number of expert witnesses called to testify. However, as shown in workload indicators provided by the Secretariat, the number of witnesses for the biennium 2004-2005 is projected to remain at the current level of 70. **The Committee believes, therefore, that there is room to adjust those estimates.**

32. The travel requirements for the Registry for 2004-2005 amount to $4,590,200 (before recosting), a decrease of $52,800. They comprise $1,035,100 for official travel of staff and $3,555,100 for travel and allowances of witnesses, support persons and dependants and other related costs. A total of 1,344 witnesses and support persons would travel to The Hague during the biennium 2004-2005, compared with 1,292 for the biennium 2002-2003. The Advisory Committee was provided, upon request, with additional information on the estimates for travel of witnesses, which is contained in annex III below.

33. The Advisory Committee notes that the provision for travel of staff includes requirements for the recruitment and testing of language staff and for coordinating with the International Criminal Tribunal for Rwanda. **The Committee points out in this connection that the workload related to the recruitment and testing of language staff is unlikely to be as heavy as in the past since most of the initial recruitment has been completed. The Advisory Committee welcomes and stresses the need for continuing coordination and collaboration between the two Tribunals in all areas of activity. However, with the establishment of a post of Prosecutor for the International Criminal Tribunal for Rwanda, the need for travel in order to coordinate with the Rwanda Tribunal during the biennium 2004-2005 may not be as pressing as it was when one Prosecutor served the two Tribunals. The Committee is of the view, therefore, that there is room for adjustment in the proposed requirements for travel of Registry staff.**

34. The Advisory Committee recalls that in the past it has expressed concern regarding the control and management of contractual services, particularly with regard to defence counsel (see, for example, A/55/642, paras. 53-59).[2] The Committee also recalls that it had requested that information be provided on the management of the legal aid programme of the Tribunal (see A/57/593, para. 28). The General Assembly, in its resolution 57/288 of 20 December 2002, requested the Secretary-General to submit a comprehensive report on the progress made by the Tribunal in reforming its legal aid system, particularly with regard to rationalizing the costs of defence counsel and establishing indigence, and the Secretary-General submitted a report pursuant to that request (A/58/288). **The Advisory Committee welcomes the efforts and measures to rationalize the costs and improve the effectiveness of the legal aid system, in particular the appointment of a financial investigator in March 2003 to assess the ability of the accused to cover the costs of defence.** As indicated in the report of the Secretary-General, full legal aid has already been cut back to partial legal aid for six accused, based on interviews and evidence gathered during field missions. Additional investigations are under way that promise additional savings (ibid., para. 41).

35. From the documentation available to it, the Advisory Committee was not in a position to ascertain what effect the measures outlined in the report on the legal aid system had on the estimated resource requirements of $29.5 million for defence counsel for the biennium 2004-2005, even though, according to the supplementary information provided to it, the estimates took into account the application of the revised system of paying for trials adopted as from July 2002. Upon enquiry, the Committee was informed that since the introduction of the new system a number of new factors have kept defence costs relatively high, namely: (a) the issuance of indictments against high-profile accused, which has resulted in an increase in the proportion of highly complex and difficult cases; and (b) the unanticipated level of resort by accused persons to rule 115 of the Rules of Procedure and Evidence, which

has resulted in exceptional levels of post-trial disclosure. According to the Secretariat, under the old payment system the above factors would have undoubtedly generated additional costs; furthermore, another advantage of the new system is that the duration of trials is expected to be reduced, as defence lawyers will no longer have an incentive to prolong cases.

36. **The Advisory Committee requests that detailed information be provided to it in the context of the next budget estimates for the Tribunal on the effectiveness of the measures outlined in the report of the Secretary-General on the legal aid system.**

37. The Skopje and Pristina field offices will be closed at the end of 2004 (see para. 24 above). The Advisory Committee was informed that, although savings would be achieved owing to the closure of the Skopje office, which is located in commercial premises, additional resources would be required to rent a commercial premises for the Banja Luka office following the closure of the United Nations Mission in Bosnia and Herzegovina. The Committee was also informed, upon enquiry, that all requirements related to the Skopje and Pristina offices have been budgeted for 2004 only, including temporary posts and related mission subsistence allowance payments, as well as general operating expenses (rent, utilities, cleaning, insurance, petrol, etc.).

III. Conclusions and recommendations

38. **In paragraphs 22, 23, 24, 28, 31 and 33 above, the Advisory Committee has made a number of observations and recommendations with regard to the resource requirements of the Tribunal. Inasmuch as the Committee does not wish to impede the completion strategy of the Tribunal, it is not recommending specific reductions under any particular item, although significant economies should be achieved. Given the comments of the Committee in paragraphs 10 and 11 above with respect to budgeting for currency fluctuations, it is not necessary, in the opinion of the Committee, to appropriate and assess at this stage the full recosting provision projected for the next two years. Instead, the General Assembly may wish to request the Secretary-General to report on additional requirements, if any, that would arise from currency movements at a time when a more complete picture of exchange rates has emerged, namely, in December 2004. On this basis, and taking into account its comments above about the potential for economies under a number of objects of expenditure, the Committee recommends that the estimated requirements for the Tribunal for the biennium for 2004-2005 be reduced by $20 million gross.**

Notes

[1] See *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 7* and corrigendum (A/58/7 and Corr.1).

[2] The report of the Office of Internal Oversight Services on the investigation into possible fee-splitting arrangements between defence counsel and indigent detainees at the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia (A/55/759, paras. 78-93), is also relevant.

Annex I

Office of the Prosecutor's transition team

The role of the Office of the Prosecutor's transition team in dealing with the issue of transferred or referred cases is expected to be broadly the same in terms of activities and workload for all three jurisdictions where the cases will be transferred or referred to, whether Bosnia and Herzegovina, Croatia or Serbia and Montenegro. The transfer or referral of cases to the local courts in the former Yugoslavia needs to be considered in three parts.

First, it is expected that some cases that have been commenced by the Tribunal by the issuance of an indictment may be referred back for prosecution in the local courts, pursuant to rule 11 bis of the Tribunal's Rules of Procedure and Evidence. The Prosecutor anticipates that about three cases in this category, involving four fugitives, may be referred to the State court in Bosnia and Herzegovina, assuming the fugitives are apprehended.

Second, there are the priority B cases. These are cases that the Prosecutor has suspended and that will not result in indictments being issued by the Tribunal before the end of 2004. Given more time and resources, these cases would have been indicted by the Tribunal, but this would have to occur after the end of 2004. It should be stressed, however, that there is no intention to prosecute these cases before the Tribunal or to issue indictments. There are 17 investigations in this category, involving approximately 62 suspects. It is the Prosecutor's intention to refer the responsibility for the further investigation and ultimate prosecution of all of these cases to the local authorities in the former Yugoslavia. It is expected that of these 17 cases, 12 (involving 48 suspects) will be referred to the State court of Bosnia and Herzegovina; 2 cases (involving 6 suspects) will be referred to the courts of Serbia and Montenegro; and 3 cases (involving 8 suspects) will be referred to the courts of Croatia. The transition team will play a substantial role in preparing these cases, including dossiers of information and evidence, for transfer to those courts in the former Yugoslavia.

Third, there are all of the low-level perpetrators who have been identified during the course of the Tribunal's investigations since 1994. There are literally thousands of suspects in this category. Many of them are responsible for very serious crimes falling within the jurisdiction of the Tribunal, but because of the relatively low level of responsibility, these suspects were never considered appropriate for prosecution by the Tribunal. The evidence relating to these perpetrators will be compiled into separate dossiers of evidence and information, and will be delivered to the local authorities for further investigation and prosecution in the domestic courts of the former Yugoslavia, including Bosnia and Herzegovina, Croatia, Serbia and Montenegro, and probably the former Yugoslav Republic of Macedonia. The transition team will also play a very significant role in the preparation of these dossiers.

Annex II

Budgetary assumptions used in formulating the budget for the International Criminal Tribunal for the Former Yugoslavia for the biennium 2004-2005 (duty station: The Hague)

Parameter	*2002*	*2003*	*2004-2005*
Rate of exchange (euro to US$ 1)	1.07	1.07	0.89
Inflation rate (percentage)	3.4	2.3	1.9
Post adjustment multiplier (percentage)	9.9	11.6	38.7
Vacancy rates for continuing posts (percentage)			
Professional and above	6.5	6.5	6.5
General Service and related	5.0	5.0	4.0
Vacancy rates for new posts (percentage)			
Professional and above	50.0	50.0	50.0
General Service and related	40.0	40.0	40.0

Annex III

Estimates for travel of witnesses

The provisions for travel and accommodation costs for witnesses and support persons are based on a total of 1,344 witnesses and support persons, of which 1,200 are witnesses and 144 are support persons.

The estimates have been calculated on the assumption that 1,200 witnesses will travel to The Hague during the biennium for hearings and trials. The International Criminal Tribunal for the Former Yugoslavia also allows eligible witnesses, with the approval of the Registrar, to be accompanied by support persons and dependants. It is estimated that 12 per cent of witnesses will be eligible for this privilege. Therefore, provisions for travel and accommodation costs for witnesses and support persons are based on 1,344 persons (1,200 plus 12 per cent).

Anticipated expenses for transportation to The Hague and travel documents for witnesses ($875 per person) total $1,176,000 for the biennium. In addition, accommodation and meals are contracted directly by the Tribunal with local hotels at an average of $130 per person per day for seven days each ($1,223,000). A witness allowance is also paid for incidental expenses at €30 per day (US$ 32 per day, totalling $301,100). The total costs for witnesses and support persons amount to $2,700,100.

A further provision is requested for working accommodations for witness assistants in hotels where witnesses are lodged. Witness assistants are provided 24 hours a day in order to provide a focal point for witnesses queries or problems and so need to be provided with private accommodations from which to work. Working accommodations for witness assistants is contracted at the same rate as witness accommodations, even though three different assistants may use the accommodation in a 24-hour period. A provision of $360,000 is requested for 3,600 days for the biennium, at $100 per day.

Witness escort ($495,000). Victims and Witnesses Section staff are required to accompany high-risk witnesses from their homes to the courts and back again. This task includes not only the physical escort of the witnesses but also liaison with national and local authorities in the field to ensure that witnesses are put under the least possible stress. The estimate is based on 550 trips at $900 per trip (including a reduced 40 per cent daily subsistence allowance payment).

	Accommodation						*Travel*		
	Number of staff	*Destination*	*Days*	*Allowance per day*	*Number of trips*	*Subtotal*	*Air ticket plus other costs*	*Subtotal*	*Total estimates*
A. Travel, board and lodging									
Witnesses	1 200	The Hague	7	130	1	1 092 000	875	1 050 000	2 142 000
Support/dependants	144	The Hague	7	130	1	131 000	875	126 000	257 000
Subtotal A	**1 344**					**1 223 000**		**1 176 000**	**2 399 000**
B. Daily allowance (incidentals)									
Witnesses	1 200	The Hague	7	32	1	268 800		-	268 800
Support/dependants	144	The Hague	7	32	1	32 300		-	32 300
Subtotal B	**1 344**					**301 100**		-	**301 100**
C. Accommodation for witness assistants			3 600	100					360 000
D. Escort travel (includes 40 per cent daily subsistence allowance (Balkans rate))					550		900		495 000
Estimates 2004-2005									**3 555 100**